

# **EXHIBIT 19**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
OXFORD DIVISION

LORINE MITCHELL, individually  
And on behalf of all others  
Similarly situated,  
Plaintiff,

vs. No. 17-cv-00170-MPM-RP  
STATE FARM FIRE & CASUALTY  
COMPANY,

Defendant.

\* \* \* \* \*

ON JUNE 7, 2018

\* \* \* \* \*

**Benchmark Reporting Agency**  
**612.338.3376**

**Confidential Pursuant to Protective Order - Deposition of Michael Berryman - 6/7/2018  
Lorine Mitchell v. State Farm Fire and Casualty Company**

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2  
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21 ALSO PRESENT: Scot Spragins  
22  
23  
24  
25

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1 STIPULATIONS  
2 IT IS HEREBY STIPULATED AND AGREED BY and  
3 between the parties hereto, through their respective  
4 attorneys, that the deposition of MICHAEL BERRYMAN may  
5 be taken on behalf of the Plaintiff, on June 7, 2018, in  
6 Oklahoma City, Oklahoma, by Kimberly D. Idleman,  
7 Certified Shorthand Reporter for the State of Oklahoma,  
8 pursuant to agreement.  
9 IT IS FURTHER STIPULATED AND AGREED BY and  
10 between the parties hereto, through their respective  
11 attorneys, that all objections, except as to the form of  
12 the question and responsiveness of the answer, are  
13 reserved until the time of trial, at which time they may  
14 be made with the same force and effect as if made at the  
15 time of the taking of this deposition.  
16 \* \* \* \* \*

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\* \* \* \* \*

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1 MICHAEL BERRYMAN,  
2 being first duly sworn, deposes and says in reply to the  
3 questions propounded as follows:  
4 \* \* \* \* \*

## PROCEEDINGS

6 MR. KAHN: Now that we're on the record, I  
7 just want to make clear that pursuant to Paragraph 5 of  
8 the parties' agreed confidentiality order, we're just  
9 going to ask the court reporter to mark the transcript  
10 as confidential in its entirety for 30 days until we  
11 have an opportunity to make our own designations.

Thank you. Sorry.

## DIRECT EXAMINATION

BY MR. SNODGRASS:

15 Q Mr. Berryman, I see that you brought -- I'm not  
16 sure if that's yours, but there's a stack of documents  
17 to your left. Is that something you brought with you?

A These?

Q Yes.

A No. I did not bring those.

21 Q Are those mine? Got it. Okay. Mr. Berryman, can  
22 you tell me what your hourly rate is for testimony?

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 Q Do you have a contract with State Farm for this  
13 file?  
14 **A By that, do you mean a written contract or?**  
15 Q Right.  
16 **A I have an engagement agreement with State Farm.**  
17 Q And does that engagement agreement set forth your  
18 hourly rates and billing requirements, etc.?  
19 **A It probably does. I would have to get it out to**  
20 **look at it to be sure.**  
21 MR. SNODGRASS: And we would request that  
22 under the rules as a billing document, Counsel, the  
23 production of it.  
24 MR. KAHN: If you want to send a request,  
25 that's fine. He's identified for you his rates both for

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1 report preparation, inspection, and also for any  
2 testimonial work.  
3 Q (By Mr. Snodgrass) All right. Can you tell me,  
4 Mr. Berryman, what you did to prepare for your  
5 deposition?  
6 **A Yes. I reviewed the file information that I was**  
7 **given. I made a site investigation of Ms. Mitchell's**  
8 **home. I also crafted a report in this matter. And I**  
9 **also met with State Farm's counsel in preparation for**  
10 **the deposition.**  
11 Q When did you meet with State Farm's counsel?  
12 **A Yesterday and today.**  
13 Q And who did you meet with?  
14 **A Jake Kahn and Scot Spragins.**  
15 Q And how many hours did you meet with them  
16 yesterday?  
17 **A Approximately four and a half yesterday.**  
18 Q Did you do anything else to prepare for your  
19 deposition today?  
20 **A I re-reviewed the materials that I'd been given,**  
21 **read my report, looked over my photographs, looked over**  
22 **my site notes, met with State Farm's counsel. I think**  
23 **that's basically it.**  
24 Q And did you meet with any State Farm counsel other  
25 than Mr. Kahn and Mr. Spragins?

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1 **A No.**  
2 Q In your list of material, file materials reviewed,  
3 you indicate that you reviewed some pleadings. Do you  
4 know whether or not those pleadings had attached to them  
5 the actual insurance policy in this case?  
6 MR. KAHN: Just so the record can reflect, he  
7 just pulled out a copy of his report.  
8 THE WITNESS: Yes. As I recall, the State  
9 Farm policy for Ms. Mitchell is part of the documents  
10 that I reviewed.  
11 Q (By Mr. Snodgrass) Did you rely upon that  
12 insurance policy in forming any of your opinions in this  
13 case?  
14 **A Well, it's something that I considered. Most of**  
15 **what I have relied upon has to do with my own**  
16 **observations and experience as a contractor, not so much**  
17 **on policy interpretations.**  
18 Q How did you use the insurance policy, if at all,  
19 in forming your opinions in this case?  
20 MR. KAHN: Objection. Form.  
21 THE WITNESS: As I said, I'm not a person who  
22 interprets policy. But I do read plain language. I  
23 just wanted to confirm for myself the notion of how RCV  
24 is calculated, depreciation, how that results in an ACV  
25 value.

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1 Q (By Mr. Snodgrass) When you said you looked at  
2 something to confirm how RCV and ACV are calculated,  
3 what specific provisions of the policy informed your  
4 opinion?  
5 MR. KAHN: Objection. Form. Mischaracterized  
6 his testimony.  
7 THE WITNESS: I don't have any specific  
8 portion of the policy that I can point to that informs  
9 me about that in and of itself.  
10 Q (By Mr. Snodgrass) Have you seen any information  
11 in the policy that tells someone how to calculate  
12 replacement cost value?  
13 MR. KAHN: Objection. Form. Calls for legal  
14 conclusion.  
15 THE WITNESS: I would just need to get it out  
16 and go through it to see if it says that specifically or  
17 not.  
18 Q (By Mr. Snodgrass) Do you recall, as you sit here  
19 today, whether or not the policy informed someone about  
20 how to calculate replacement cost value?  
21 **A I don't recall, sitting here, no.**  
22 Q Do you recall whether or not the policy informed  
23 someone about how to calculate actual cash value?  
24 MR. KAHN: Objection. Form.  
25 THE WITNESS: I don't recall that, as I sit

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1 here. I would be happy to get the policy out and look  
2 at it if you would like.  
3 Q (By Mr. Snodgrass) Well, if you can't remember  
4 what the policy says, that's okay with me. Your  
5 description attached to your report, it didn't look like  
6 you ever worked as a claims adjuster in any capacity.  
7 Is that true?  
8 **A I have not.**  
9 Q Have you ever been -- adjusted a property  
10 insurance claim for any insurance company in any  
11 jurisdiction?  
12 **A No.**  
13 Q Okay. Have you ever been employed by an insurance  
14 company?  
15 **A No.**  
16 Q Have you ever been employed by an adjusting  
17 company?  
18 **A No.**  
19 Q Are you a licensed insurance adjuster in the State  
20 of Mississippi?  
21 **A No.**  
22 Q Do you know what a public adjuster is?  
23 **A Yes.**  
24 Q What is a public adjuster?  
25 **A As I understand it, a public adjuster is an**

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1 **individual who holds himself out as a licensed adjuster**  
2 **that often provides services for the policyholder.**  
3 Q Are you a licensed public adjuster in the State of  
4 Mississippi?  
5 **A No.**  
6 Q Are you a licensed insurance adjuster in any state  
7 in the United States?  
8 **A No, I'm not.**  
9 Q Are you a licensed public adjuster in any state in  
10 the United States?  
11 **A No, I'm not.**  
12 Q Do you hold any licenses within the insurance  
13 industry?  
14 MR. KAHN: Objection. Form.  
15 THE WITNESS: I do not hold insurance-related  
16 licensure.  
17 Q (By Mr. Snodgrass) Do you know what a manage  
18 repair program is?  
19 **A I'm not certain of your question. Could you**  
20 **rephrase it?**  
21 Q In the property insurance industry, are you  
22 familiar with the concept called a manage repair  
23 program?  
24 MR. KAHN: Objection. Form.  
25 THE WITNESS: Not by that name. No.

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1 Q (By Mr. Snodgrass) Okay. Do you have another  
2 name for a manage repair program?  
3 **A Well, it depends on what that is. I think you**  
4 **would have to describe it for me first.**  
5 Q A manage repair program is a program that  
6 insurance companies use to self-direct repairs for  
7 policyholders?  
8 **A By self-direct, do you mean get the work done for**  
9 **them?**  
10 Q Correct.  
11 **A I do not know of those systems.**  
12 Q Okay. I take it then you've never been part of an  
13 insurance company's manage repair program?  
14 MR. KAHN: Objection. Form.  
15 THE WITNESS: Well, I'm getting kind of hung  
16 up on your terminology. I have not been involved in an  
17 insurance company program where the insurance company  
18 provided for the repairs for the policyholder and paid  
19 me, for instance, as a contractor to do the work.  
20 Q (By Mr. Snodgrass) Did you talk to any State Farm  
21 claims adjuster in rendering your opinions in this case?  
22 **A No.**  
23 Q Did you talk to any State Farm employee in  
24 rendering your opinions in this case?  
25 **A No, I didn't.**

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1 Q Did you talk to any State Farm management  
2 personnel in rendering your opinions in this case?  
3 **A No.**  
4 Q Did you review any State Farm claims handling  
5 guidelines in preparing to render your opinions in this  
6 case?  
7 **A No.**  
8 Q I take it because you're not sure what State  
9 Farm's policy provides as to replacement cost and actual  
10 cash value, you're not rendering an opinion today as to  
11 whether or not the policy of insurance at issue is  
12 ambiguous?  
13 MR. KAHN: I'm objecting to the form. Calls  
14 for a legal conclusion.  
15 THE WITNESS: I am not here today to opine  
16 about as an expert about the State Farm insurance  
17 policy.  
18 Q (By Mr. Snodgrass) Similarly, I take it you are  
19 not here to render an opinion on how RCV should be  
20 calculated under Mississippi law?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: I am not here to offer opinions  
23 as an expert concerning Mississippi law.  
24 Q (By Mr. Snodgrass) Are you here to offer an  
25 opinion about the meaning of actual cash value under

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1 Mississippi law?

2 MR. KAHN: Objection. Form.

3 THE WITNESS: As I said earlier, I am not here

4 to opine about Mississippi law as it relates to

5 insurance matters.

6 Q (By Mr. Snodgrass) Are there any opin ons that

7 you plan to express in this case that are not reflected

8 in your May 21st, 2018, report?

9 MR. KAHN: Objection. Form.

10 THE WITNESS: I believe this report

11 encompasses all my opin ons in this matter. Of course

12 during this deposition, if you were to ask me quest ons

13 outside that, I'd be happy to answer them, likewise at

14 trial. And I would reserve the opportunity to form

15 additional opin ons should the plaintiff's expert, Toby

16 Johnson, render additional opinions.

17 Q (By Mr. Snodgrass) I take it, Mr. Berryman,

18 because you've never worked for an insurance company or

19 adjusted a property claim or hold any licensure for any

20 insurance-related matter, you're not offering opinions

21 on insurance practices or claims handling in this case,

22 are you?

23 MR. KAHN: Objection. Form.

24 THE WITNESS: I am not here to offer opin ons

25 on claim handling pract ces. However, as a construction

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1 Q So it's fair to state that you haven't been

2 involved in the construction practices in the State of

3 Mississippi for approximately 20 years?

4 MR. KAHN: Objection. Form.

5 THE WITNESS: As I said, I have not performed

6 a project in Mississippi in that period of time. But I

7 feel certain in saying that the construct on practices

8 that are generally employed from day-to-day in Oklahoma,

9 Texas, Mississippi, Louisiana, Alabama and other states

10 in this general area are same or similar.

11 Q (By Mr. Snodgrass) Well, then let me ask you

12 this, d d State Farm act similarly presently in the

13 State of Alabama and the State of Mississippi as it

14 relates to the issues in this case?

15 MR. KAHN: Objection. Form.

16 THE WITNESS: I'm not in the pos t on to opine

17 about what State Farm does on a daily basis in various

18 states.

19 Q (By Mr. Snodgrass) That wasn't my question. You

20 said you were familiar with the construction pract ces

21 in different states. I'm just wondering when you sa d

22 including Mississippi and Alabama, and I'm just

23 wondering whether or not State Farm acts the same way as

24 it relates to the issues in these cases in the states of

25 Mississippi and Alabama. Yes, no, or you don't know?

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1 restorat on contractor, I am here to opine about common

2 practices and industry standards as I have experienced

3 them in my daily business.

4 Q (By Mr. Snodgrass) Okay. Are you a licensed

5 contractor in the State of Mississippi?

6 **A Yes, I am.**

7 Q And when d d you get l censure to be a contractor

8 in the State of Mississippi?

9 **A I'm not sure of the exact date, but it would have**

10 **been approximately 17 to 18 years ago, plus or minus.**

11 Q Is that l censure current?

12 **A Yes.**

13 Q And when was the last time you, yourself, were

14 involved in a construction project in the State of

15 Mississippi?

16 **A Again, it would be an approximation as I sit here,**

17 **but probably somewhere on the order of around 1988 or**

18 **1989. I'm sorry --**

19 Q That was the last time --

20 **A I'm sorry. I misspoke. Approximately 1998 or**

21 **1999.**

22 Q That was the last time you, yourself, were

23 involved in a construction project in the State of

24 Mississippi?

25 **A Yes.**

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1 MR. KAHN: Objection. Form.

2 THE WITNESS: Well, I think you're mixing

3 apples and oranges there because I'm opining about what

4 construction companies do as common practices and

5 industry standards. That is the same or similar in the

6 states that we've been discussing. If you're asking me

7 to opine about what the carriers, such as State Farm,

8 do, same or similar or not in those same states, I'm not

9 in a pos tion to opine about that.

10 Q (By Mr. Snodgrass) Okay. So your opin ons are

11 just limited to the contractor side; what the carriers

12 do, whether they do it differently in different states,

13 that's not you. You're just on the construction side.

14 Is that fair?

15 MR. KAHN: Objection. Form.

16 THE WITNESS: Well, as you can tell from my CV

17 that I've been a construction contractor for 40 years.

18 In that time I have worked heavily in insurance

19 restorat on work. So I intend to offer opin ons about

20 what are the common practices and industry standards in

21 that industry. How are estimates formulated. How is

22 the work done. How is the process of insurance

23 restorat on and the restoration of the pol cyholder's

24 properties, how does that typically work. That's what

25 I'm here to talk about today.

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1 Q (By Mr. Snodgrass) Well, and that's why I asked.  
2 If you're going to testify or render opinions about how  
3 insurance companies act in different states, as I  
4 understand, you're relying on how insurance companies  
5 act in different states. Because you haven't been  
6 active in Mississippi for approximately 20 years, I'm  
7 wondering whether or not your client in this case, State  
8 Farm, acts the same way in different states. Do you  
9 know? Yes or no?  
10 MR. KAHN: Object on. Form. Compound  
11 question.  
12 THE WITNESS: When you say, acts, that's a  
13 very very -- for the acts of an insurance company,  
14 that's very broad. So I cannot answer that question as  
15 broadly as you put it.  
16 Q (By Mr. Snodgrass) Okay. As it relates to the  
17 issue of labor depreciation specifically, does State  
18 Farm act the same in the states that you listed as  
19 having extensive experience in?  
20 MR. KAHN: Object on. Form.  
21 Q (By Mr. Snodgrass) Yes or no? Or you don't know?  
22 **A Well, you are mischaracterizing my testimony. I**  
23 **didn't say that I had extensive experience in those**  
24 **states, first of all. Secondly, I have not made a study**  
25 **of how State Farm might act differently, for instance,**

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1 Q Why?  
2 **A For just good business judgment.**  
3 Q Is that just so that you can stay potentially  
4 qualified as an expert witness?  
5 MR. KAHN: Object on. Form.  
6 THE WITNESS: No. It's so that I can be  
7 prepared to do construction work in the State of  
8 Mississippi if one of my clients chooses to have me go  
9 there.  
10 Q (By Mr. Snodgrass) One part of your work right  
11 now is presently just working in litigation on behalf of  
12 State Farm?  
13 **A I would say -- I haven't made an exhaustive study**  
14 **of it, but I would say my yearly business volume at this**  
15 **point is probably -- State Farm occupies perhaps**  
16 **somewhere around 5 percent of that total, plus or minus.**  
17 Q Didn't you testify in other cases that you have up  
18 to 50 to 75 active files for State Farm at any given  
19 time?  
20 **A No. I think that's a mischaracterization.**  
21 Q Well, how many active cases do you have for State  
22 Farm right now?  
23 **A I don't know.**  
24 Q Can you give me a reasonable estimate? Is it  
25 10,000? Is it zero?

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1 **in the State of Alabama, than they do in the State of**  
2 **Mississippi. So I'm not in a position to give you an**  
3 **answer on that.**  
4 Q I see. When you say that I made an assumption  
5 that you had extensive experience in those states, how  
6 much experience do you have in the State of Alabama?  
7 When was the last time you were involved in a  
8 construct on project in Alabama?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: I'm not sure that -- I would  
11 say, as I sit here, could be about the same time frame,  
12 1998 to 2000, plus or minus. And that's just an  
13 approximation.  
14 Q (By Mr. Snodgrass) Are you licensed as a  
15 contractor in the State of Alabama?  
16 **A I am not.**  
17 Q Okay. So have you ever operated as a contractor  
18 in the State of Alabama?  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: I have been licensed in the  
21 State of Alabama in the past.  
22 Q (By Mr. Snodgrass) And so why is your license  
23 current in the State of Mississippi if you haven't  
24 worked on a construction project in the past 20 years?  
25 **A Because I've chosen to keep that license active.**

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: I would say right now  
3 probably -- as I sit here, just to give you a range,  
4 somewhere around 10 to 15 files that are open.  
5 Q (By Mr. Snodgrass) And how many files have you  
6 worked on for State Farm since 1998?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: I don't have any way of knowing  
9 that with accuracy without going back and counting them.  
10 Q (By Mr. Snodgrass) Can you give me a reasonable  
11 range? Is it over 500?  
12 MR. KAHN: Objection. Form.  
13 THE WITNESS: No.  
14 Q (By Mr. Snodgrass) Is it over 200?  
15 **A No.**  
16 Q Is it over 100?  
17 MR. KAHN: Objection. Form.  
18 THE WITNESS: You're talking about in the last  
19 20 years?  
20 Q (By Mr. Snodgrass) Yeah.  
21 **A I would say -- as I said before, I can't know with**  
22 **certainty, but it -- for 20 years it may be somewhere on**  
23 **the order of a hundred.**  
24 Q Would that be cases where you both testified and  
25 consulted? Or would that just be cases where you

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1 testified?  
2 MR. KAHN: Objection. Form.  
3 THE WITNESS: That would be just number of  
4 files, number of assignments.  
5 Q (By Mr. Snodgrass) And how much consulting fees  
6 would you say you've generated from State Farm in the  
7 past 20 years? Would you say over a half million? Over  
8 a million?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: I don't know.  
11 Q (By Mr. Snodgrass) Can you give me a reasonable  
12 range?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: I don't feel like I could with  
15 very much accuracy, because the files are, you know,  
16 they have different levels of involvement. They take  
17 different times. They were on different rates,  
18 different times depending on what year it was. There's  
19 just so many variables in there, I don't feel like I  
20 could give you a good approximation of that.  
21 Q (By Mr. Snodgrass) Well, would you know it's  
22 above a certain level for certain? In other words, I  
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Page 23

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7 Q (By Mr. Snodgrass) From your CV I take it you  
8 never took any college classes on the subject matter of  
9 property insurance?  
10 **A That's correct.**  
11 Q And you're not a member of any insurance-related  
12 professional societies?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: That's correct.  
15 Q (By Mr. Snodgrass) You hold no professional  
16 designations in the insurance industry?  
17 **A That's correct.**  
18 MR. SNODGRASS: Court reporter, if you could  
19 please mark Exhibit -- or Document B as Exhibit 1, and  
20 hand that to the witness and attorney, please?  
21 (Exhibit No. 1 was marked for identification  
22 purposes)  
23 Q (By Mr. Snodgrass) Are you ready to go?  
24 **A Yes.**  
25 Q I'm showing you what's been marked as Deposition

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1 Exhibit No. 1. I'll represent to you that this is  
2 a document that was copied off of and from Exact Word  
3 Solutions' website. First off, do you know what Exact  
4 Word Solutions is?  
5 **A Yes.**  
6 Q Okay. And are you familiar with one of their  
7 software products called Xactimate?  
8 **A Yes.**  
9 Q Do you claim to have expertise in Xactimate  
10 software?  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: Yes, I do.  
13 Q (By Mr. Snodgrass) Can you tell me whether or not  
14 you had any -- strike that. Can you tell me whether or  
15 not you passed the level three certification user test  
16 in Xactimate?  
17 **A I have not taken this test.**  
18 Q And have you taken the level two certification in  
19 Xactimate?  
20 **A No, I haven't.**  
21 Q Have you taken the level one certification test in  
22 Xactimate?  
23 **A No, I haven't.**  
24 Q You claim to have attended any professional  
25 courses in Xactimate?

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1 **A No, I haven't.**  
2 Q Do you believe you're an expert in Xactimate  
3 because of being self-taught?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: Absolutely.  
6 MR. KAHN: Give me a second to get my  
7 objection out.  
8 Q (By Mr. Snodgrass) What current Xactimate  
9 software product are you proficient in?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: Xactimate 28.  
12 Q (By Mr. Snodgrass) And do you hold a software  
13 license from Xactimate for its software?  
14 **A And by that, do you mean a license to operate the  
15 program?**  
16 Q Correct.  
17 **A Yes, I do.**  
18 Q How long have you held that licensure?  
19 **A Well, that license is renewed on a yearly basis.  
20 But I have had that license, renewing it each year, for  
21 approximately 17 years now.**  
22 Q I think you mentioned that you had a copy of your  
23 report with you?  
24 **A Yes.**  
25 Q Can you take that out, please?



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1 **A (Witness complies)**  
 2 MR. KAHN: He's got it.  
 3 Q (By Mr. Snodgrass) There's one last question on  
 4 the last subject matter. Other than you telling us  
 5 you're an expert in Xactimate, is there any objective  
 6 information that exists to actually prove you're an  
 7 expert in Xactimate?  
 8 MR. KAHN: Objection. Form.  
 9 THE WITNESS: Well, yes. I think so. I think  
 10 if a person was to take a look at how we operate our  
 11 business, the fact that we've been in business as a  
 12 restoration contractor for 40 years, using Xactimate on  
 13 a daily basis for at least 17 of those years, and not  
 14 just using it as a consulting expert, but using it as a  
 15 practicing general contractor, using it as a tool to  
 16 provide bid proposals to the marketplace, for which we  
 17 sign contracts to actually perform work, I think that  
 18 that would demonstrate that I am highly proficient in  
 19 using Xactimate, because it has been tested in the  
 20 marketplace to see if I use it competitively and  
 21 accurately, because I'm successful in landing  
 22 construction projects with it and making a profit while  
 23 using that program.  
 24 Q (By Mr. Snodgrass) To be fair, you're not the  
 25 only one at your company that uses Xactimate; right?

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1 MR. KAHN: Object on. Form.  
 2 MR. SPRAGINS: Who said he was wildly  
 3 successful?  
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Page 27

1 **A That's right.**  
 2 Q Okay. So how can we objectively determine whether  
 3 or not you're an expert if you've never passed any test  
 4 and hold no -- have never had any training on it. How  
 5 do we objectively know, other than taking your word,  
 6 that it's made you wildly successful?  
 7 MR. KAHN: Objection. Form. Asked and  
 8 answered.  
 9 THE WITNESS: Yeah. I think I answered that  
 10 for you in the sense that the ultimate test of a  
 11 person's ability to use this program properly can be  
 12 tested in the competitive marketplace. If you cannot  
 13 operate it well enough to be proficient to get  
 14 everything into an estimate that's required in order to  
 15 make a profit, you're not going to stay in business very  
 16 long. If you operate it conversely in the opposite  
 17 direction and put things in it that shouldn't be in  
 18 there, you're not going to be competitive in the  
 19 marketplace, and you're not going to secure work.  
 20 So being successful with this program, using  
 21 it on a daily basis to run a successful construction  
 22 company, is the ultimate test, in my opinion, as to a  
 23 person's proficiency in the program.  
 24 Q (By Mr. Snodgrass) Well, how wildly successful is  
 25 your company? What's your gross profits per year?

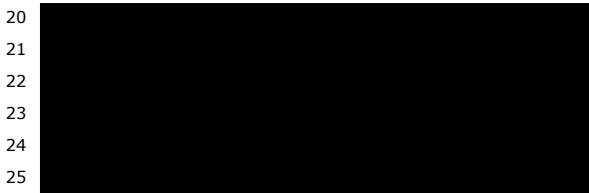
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 9 Q (By Mr. Snodgrass) So it might not be that you're  
 10 all that successful as a businessman, maybe you're just  
 11 successful as a testifier?  
 12 MR. KAHN: Objection. Form. Sorry. Go  
 13 ahead, Joe.  
 14 THE WITNESS: I'm sorry. You got cut off.  
 15 Q (By Mr. Snodgrass) Because we don't know what  
 16 amount of the gross revenue comes from your testifying,  
 17 it's really hard to determine whether or not you have a  
 18 successful company.  
 19 MR. KAHN: Objection. Form.  
 20 THE WITNESS: Is that a statement or a  
 21 question?  
 22 Q (By Mr. Snodgrass) I'm just wondering, you're the  
 23 one that said the reason why you're proficient in  
 24 Xactimate is because your construction company is  
 25 profitable. So I started asking you some questions

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1 about the profitability of your company.  
2 You told me that your gross revenue and  
3 profits include your work for State Farm as a testifying  
4 expert. I've asked you a series of questions before  
5 about how much money you made from State Farm, and you  
6 told me you really couldn't say because you didn't keep  
7 track.  
8 So I'm wondering, how do we know that your  
9 company is successful versus you being successful in  
10 testifying on behalf of State Farm and getting them to  
11 pay you a lot of money?  
12 MR. KAHN: I'm going to object to form. It  
13 mischaracterizes the last half hour of testimony. But  
14 go ahead and answer.  
15 THE WITNESS: Yeah. That's an incredibly  
16 convoluted question with all sorts of portions to the  
17 question that mischaracterized my testimony. There's a  
18 lot of non-sequiturs in there. So I'm going to have to  
19 ask you to rephrase it.



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1 was in Oklahoma?  
2 MR. KAHN: Objection. Form.  
3 THE WITNESS: Likewise probably close to 100  
4 percent.  
5 Q (By Mr. Snodgrass) What about the year before  
6 that?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: I'm not sure. I'd probably have  
9 to go back and check my records to be able to be  
10 accurate on that.  
11 Q (By Mr. Snodgrass) When is the last time a big  
12 percentage of your business was outside of Oklahoma?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: What are you characterizing as a  
15 big percentage?  
16 Q (By Mr. Snodgrass) Let's say more than 10  
17 percent?  
18 MR. KAHN: Objection. Form. Joe, just so  
19 I -- are you asking about construction projects? Are  
20 you asking about expert witness work?  
21 MR. SNODGRASS: No. I'm not talking about  
22 State Farm work. I'm talking about his construction  
23 business.  
24 THE WITNESS: Well, as best I can recall  
25 sitting here, probably somewhere in the order of 10 to

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16 Q (By Mr. Snodgrass) Where does your construction  
17 company operate?  
18 MR. KAHN: Object on. Form.  
19 THE WITNESS: It's domiciled in Oklahoma City.  
20 Licensed in several different states. So it operates in  
21 those states from time to time.  
22 Q (By Mr. Snodgrass) What percentage of your work  
23 is in Oklahoma?  
24 **A I would say right now nearly 100 percent.**  
25 Q And the year before, what percentage of your work

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1 15 years ago.  
2 Q (By Mr. Snodgrass) So you really don't get around  
3 the country that much any more?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: I'm not sure what you mean by  
6 that.  
7 Q (By Mr. Snodgrass) Where do you advertise?  
8 MR. KAHN: Objection. Form.  
9 THE WITNESS: Did you say where do I  
10 advertise?  
11 Q (By Mr. Snodgrass) Yes.  
12 **A I generally do not have to advertise.**  
13 Q And when you have, where do you advertise?  
14 **A Perhaps magazines, newspapers.**  
15 Q Where are these magazines and newspapers located?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: Do you mean the ones that might  
18 have advertisements in them?  
19 Q (By Mr. Snodgrass) Yes.  
20 **A I probably have some back in my office. Is that**  
21 **what you mean?**  
22 Q No. I mean, where -- like, you advertise in a  
23 newspaper. What newspaper?  
24 **A If I -- if I did use the newspaper at some time in**  
25 **the past, it probably would have been here in Oklahoma**

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1 **City.**  
 2 Q And you said you advertised in magazines. What  
 3 magazines did you advertise in?  
 4 MR. KAHN: Objection. Form.  
 5 THE WITNESS: If I did advertise in magazines,  
 6 it would have been likely here in Oklahoma City.  
 7 Q (By Mr. Snodgrass) So tell me why again you're  
 8 keeping the Mississippi license active. Do you ever  
 9 advertise your services in Mississippi?  
 10 MR. KAHN: Objection. Form. Asked and  
 11 answered.  
 12 THE WITNESS: I don't recall a time when I  
 13 advertised in Mississippi.  
 14 Q (By Mr. Snodgrass) So why would you keep the  
 15 license? Why would you have an expectation that you'll  
 16 ever do work there again?  
 17 MR. KAHN: Objection. Form. Asked and  
 18 answered.  
 19 THE WITNESS: I just believe it's a good  
 20 business decision to keep the license. A license is  
 21 difficult to get. And I have earned that license with  
 22 going through the proper steps, testing that's required  
 23 and so forth. And so I've chosen to keep the license  
 24 over the years.  
 25 Q (By Mr. Snodgrass) For the test in Mississippi,

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1 MR. SNODGRASS: Sure. If you want, I can have  
 2 the court reporter mark Exhibit A in the folder as  
 3 Exhibit 2 in the deposition. And I'll stop talking so  
 4 she can do that.  
 5 (Exhibit No. 2 was marked for identification  
 6 purposes)  
 7 Q (By Mr. Snodgrass) Page 3 of your report, you  
 8 purport to define RCV, ACV, and depreciation. Do you  
 9 see that?  
 10 MR. KAHN: Objection. Form.  
 11 THE WITNESS: Which paragraph are you pointing  
 12 to?  
 13 Q (By Mr. Snodgrass) The paragraph that starts, "It  
 14 is standard," all the way to the bottom of the page,  
 15 including footnotes 3 and 4.  
 16 **A Yes. I see that.**  
 17 Q Is it your understanding that this case involves a  
 18 challenge to the sufficiency of an actual cash value  
 19 payment?  
 20 **A Yes.**  
 21 Q So you would agree with me, would you not, that it  
 22 is critical before anybody renders an opinion that we  
 23 actually know what the phrase actual cash value means;  
 24 correct?  
 25 MR. KAHN: Objection. Form.

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1 did you waive it under reciprocal licensure laws?  
 2 MR. KAHN: Objection. Form.  
 3 THE WITNESS: I did not.  
 4 Q (By Mr. Snodgrass) Did you take a test?  
 5 **A Yes.**  
 6 Q Was it a national standardized test or was it a  
 7 test specific for Mississippi?  
 8 MR. KAHN: Objection. Form.  
 9 THE WITNESS: I think it was, as best I can  
 10 recall, it was portions of each.  
 11 Q (By Mr. Snodgrass) You can't really remember one  
 12 way or the other?  
 13 MR. KAHN: Objection. Form. Not what he  
 14 said.  
 15 THE WITNESS: Well, as I said -- as I said  
 16 earlier in this deposition, I got the license  
 17 approximately 18 years ago, plus or minus. As best I  
 18 can recall what I did 18 years ago, I think the testing  
 19 was both, part national and part concerning Mississippi  
 20 itself, its laws, business laws, and so forth.  
 21 Q (By Mr. Snodgrass) All right. On Page 3 of your  
 22 May 21, 2018, opinion, you have some definitions that  
 23 you put forth. Do you see that?  
 24 MR. KAHN: Joe, do you want to go ahead and  
 25 mark this or no?

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1 THE WITNESS: Yes. I think that's right.  
 2 Q (By Mr. Snodgrass) Okay. And you have testified  
 3 in another labor depreciation class action, have you  
 4 not, that a judge, and not you, should properly  
 5 interpret these words and phrases; correct?  
 6 MR. KAHN: Objection. Form.  
 7 THE WITNESS: I have testified in another  
 8 labor depreciation case, but I'm not sure what a judge  
 9 has or has not done.  
 10 Q (By Mr. Snodgrass) No. But you testified in  
 11 another labor depreciation class act on that a judge,  
 12 and not you, should properly interpret the phrase,  
 13 actual cash value; correct?  
 14 MR. KAHN: Objection. Form.  
 15 THE WITNESS: Probably as it pertains to legal  
 16 matters. I mean, what I'm doing here on Page 3 is  
 17 giving the reader an idea, based on my experience of  
 18 common practices and industry standards, working in the  
 19 business, what my understanding of actual cash value is.  
 20 Q Well, I will get to that. But first, I'm just  
 21 wondering whether or not you believe you, versus a  
 22 judge, should properly interpret the phrase, actual cash  
 23 value?  
 24 MR. KAHN: Objection. Form.  
 25 THE WITNESS: I think it depends on the venue

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1 and the subject matter. Of course if it's a question of  
2 legal meaning or the legal interpretation of that word, yes,  
3 I think that would be best done by others. But as far  
4 as giving the reader an idea of how it works in the real  
5 world out there, common practices and industry standards,  
6 I feel very qualified from my experience to offer an  
7 opinion as to what that -- what the interpretation of  
8 actual cash value is.  
9 Q (By Mr. Snodgrass) Okay. Well, then let's get to  
10 your expert interpretation of the phrase, actual cash  
11 value. Can you tell me, what the -- how State Farm  
12 interprets actual cash value in the different  
13 jurisdictions that you claim to be an expert in?  
14 MR. KAHN: Objection. Form.  
15 THE WITNESS: I have not made a study, a  
16 careful study, of what State Farm, how they define it on  
17 various policies in various states in which I've worked.  
18 All I can tell you is what I know from my daily travels  
19 as a construction restoration contractor how that phrase  
20 is readily interpreted in real world situations.  
21 Q (By Mr. Snodgrass) Would you agree that it might  
22 change depending on the insurance policy language  
23 itself?  
24 MR. KAHN: Objection. Form.  
25 THE WITNESS: I think the contractual

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1 business back to where it was immediately before the  
2 loss? Is that what actual cash value is or is that  
3 replacement cash value? Or don't you know?  
4 MR. KAHN: I'm going to object to the form,  
5 but can you read that question back to me, please?  
6 (Court reporter read back)  
7 MR. SNODGRASS: You didn't read it exactly  
8 right. I will state it again.  
9 Q (By Mr. Snodgrass) Do you know if actual cash  
10 value, or ACV, is intended to be an amount of money  
11 necessary to return the policyholder's home or business  
12 back to where it was before the loss?  
13 MR. KAHN: Object on. Form. Asks for a legal  
14 conclusion.  
15 THE WITNESS: No. I don't think that that's  
16 an accurate characterization of what actual cash value  
17 is readily interpreted as.  
18 Q (By Mr. Snodgrass) Okay. Do you know whether or  
19 not replacement cost value, or RCV, is intended to be an  
20 amount of money necessary to return the policyholder's  
21 business or home back to where it was immediately before  
22 the loss? True? False? Or you don't know?  
23 MR. KAHN: Object on. Form. Calls for a  
24 legal conclusion.  
25 THE WITNESS: I do not think that that's an

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1 definition and maybe the legal definition may change.  
2 But my understanding, as I have expressed here, about  
3 what actual cash value is and how that is readily  
4 interpreted on a daily basis in the marketplace, I've  
5 expressed that on Page 3.  
6 Q (By Mr. Snodgrass) I understand that. So I'm  
7 wondering if your interpretation is different than the  
8 insurance policy interpretation, which one should we  
9 use?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I guess it would depend on which  
12 insurance policy. I would need to take a look at that  
13 to try to give you an opinion on that.  
14 Q (By Mr. Snodgrass) So before you render an  
15 opinion on which interpretation you want to use, you  
16 would agree you should first look at the insurance  
17 policy?  
18 MR. KAHN: Objection. Form. Mischaracterizes  
19 testimony.  
20 THE WITNESS: No. I think I've stated it  
21 pretty clearly in my report that what my understanding  
22 is based on my experience of the term actual cash value.  
23 Q (By Mr. Snodgrass) Okay. Can you tell me whether  
24 or not actual cash value is intended to be an amount of  
25 money necessary to return the policyholder's home or

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1 accurate description of replacement cost value, as I  
2 understand it.  
3 Q (By Mr. Snodgrass) Okay. So the standard of  
4 returning the home back to its pre-loss condition, you  
5 don't think that has any relationship to how RCV or ACV  
6 should be interpreted; correct?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: Well, that's a different  
9 question. That's very broad. Of course, what existed  
10 prior to the loss, what exists after the loss, what  
11 needs to be done to repair the home, all of those things  
12 factor into the formulation of RCV and ACV.  
13 Q (By Mr. Snodgrass) So what is ACV intended to do?  
14 What's its purpose, Mr. Berryman, as far as you know as  
15 a contractor from Oklahoma City? What's it supposed to  
16 do?  
17 MR. KAHN: Objection. Form.  
18 THE WITNESS: Well, could you be more specific  
19 about what it's supposed to do?  
20 Q (By Mr. Snodgrass) Yeah. I mean, what's it  
21 supposed to accomplish?  
22 MR. KAHN: Objection. Form.  
23 Q (By Mr. Snodgrass) What's the purpose behind an  
24 actual cash value payment? Do you know?  
25 MR. KAHN: Objection. Form.

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1 THE WITNESS: It may have several purposes.  
2 Could you be more specific?  
3 Q (By Mr. Snodgrass) No, I can't. If you don't  
4 know, that's fine. But do you know what the purpose of  
5 an actual cash value payment is?  
6 MR. KAHN: Objection. Form.  
7 THE WITNESS: The purpose in deriving an  
8 actual cash value is to determine what the value of a  
9 particularly damaged component, such as a roof, what was  
10 the actual -- just says, what is the actual cash value  
11 of that component as it was situated right before the  
12 loss occurred.  
13 Q (By Mr. Snodgrass) Okay. Is actual cash value  
14 supposed to be amount of money to return the  
15 policyholder, that policyholder's home or business to  
16 the condition it was immediately before the loss? Is  
17 that what you are saying?  
18 MR. KAHN: Objection. Form.  
19 THE WITNESS: No. That's not what I'm saying.  
20 Q (By Mr. Snodgrass) So describe it again. What is  
21 the purpose behind an actual cash value payment?  
22 MR. KAHN: Objection. Form. Asked and  
23 answered.  
24 THE WITNESS: There may be several purposes.  
25 But I can tell you in the industry how it is formulated,

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: It's not that simple. I would  
3 describe it more as a step-by-step process that does  
4 include mathematics, as you described. I wouldn't term  
5 it a formula. It's more of a process and taking certain  
6 things into consideration, and going through it step by  
7 step to arrive at what we call in the industry an actual  
8 cash value.  
9 Q (By Mr. Snodgrass) Okay. And in this case, and  
10 in your experience, State Farm uses Xactimate to run  
11 these calculations; correct?  
12 MR. KAHN: Objection. Form.  
13 THE WITNESS: Well, definitely State Farm uses  
14 Xactimate as a software estimating platform. And it's  
15 involved, I'm sure, to some degree in these  
16 calculations. Yes.  
17 Q (By Mr. Snodgrass) I don't understand what you're  
18 saying. Is that a yes or a no?  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: I believe my answer is on the  
21 record exactly like I intend it to be.

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1 it's a value that's derived to express the actual cash  
2 value of a particular component, such as a roof on a  
3 home, immediately before a loss occurred, such as a hail  
4 loss from a hailstorm.  
5 Q (By Mr. Snodgrass) Well, I'm trying to figure out  
6 what the purpose is. Because, you've come up -- correct  
7 me if I'm wrong, but you've told me what you think ACV  
8 is in your report in terms of a formula; correct?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: I'm not so sure I would  
11 characterize it that way. But, I mean, I have expressed  
12 exactly what I mean on Page 3.  
13 Q (By Mr. Snodgrass) Well, you say that ACV is  
14 calculated using the following general process, and then  
15 you talk about multiplication, and talk about  
16 depreciation factor or percentage to arrive at an ACV.  
17 Do you see that formula? In fact, in footnotes 3 and 4,  
18 you are using multiplication and subtraction to get to  
19 actual cash value; correct?  
20 MR. KAHN: Is that a question?  
21 Q (By Mr. Snodgrass) right. I'm just -- if he's  
22 denying -- let's strike everything. Let's start over.  
23 Are you claiming that there is a proper  
24 formula, a proper math formula, to determine what actual  
25 cash value is? Yes or no.

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8 Q Okay. In this case, was total intended by you to  
9 include both labor and materials?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: Yes.  
12 Q (By Mr. Snodgrass) Okay. So I want to talk to  
13 you about that. So you and I have a disagreement about  
14 the use of the word "total" in your second bullet point.  
15 As it relates to the word "total," let me ask you this;  
16 does Xactimate software allow different options as it  
17 relates to this formula?  
18 MR. KAHN: Objection. Form.  
19 THE WITNESS: It depends on what software,  
20 what generation. It's very difficult for me to answer  
21 that question as you've posed it.  
22 Q (By Mr. Snodgrass) Okay. Well, do you know  
23 whether or not Xactimate software has options to allow  
24 the formula to change from what you've written here on  
25 Page 3?

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: I'm not sure if it does or not.  
3 Q (By Mr. Snodgrass) So certainly you're not here  
4 to say that Xactimate doesn't have different ways of  
5 calculating actual cash value than you have; correct?  
6 MR. KAHN: Objection. Form.  
7 THE WITNESS: I'm not here to opine about what  
8 Xactimate or Xactware can and cannot do.  
9 Q (By Mr. Snodgrass) Do you know off the top -- do  
10 you consider yourself an expert on what Xactware can and  
11 can't do as it relates to depreciation?  
12 MR. KAHN: Objection. Form.  
13 THE WITNESS: I do not consider myself to be  
14 an expert on what Xactware can and cannot do. There may  
15 be functions of the Xactimate program for which I have  
16 not been involved and do not know what it can and cannot  
17 do.  
18 Q (By Mr. Snodgrass) So certainly you're not saying  
19 that Xactware, itself, doesn't have different  
20 interpretations of actual cash value; correct?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: I don't know that Xactware would  
23 make such a determination. And again, I don't know what  
24 Xactware can and cannot do.  
25 Q (By Mr. Snodgrass) That's why I think it's

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1 is unreasonable, are you?  
2 MR. KAHN: Objection. Form. To what extent I  
3 understand, it calls for a legal conclusion. You can  
4 answer.  
5 THE WITNESS: I'm not here in a position to  
6 opine about State Farm's business practices whether they  
7 are right, wrong, what have you, in the State of  
8 Alabama.  
9 Q (By Mr. Snodgrass) Okay. I understand that. But  
10 you're not here -- so you're not here to say that there  
11 can't be more than one reasonable interpretation of  
12 actual cash value, are you?  
13 MR. KAHN: Objection. Form. Calls for legal  
14 conclusion.  
15 THE WITNESS: What I am able to tell you is  
16 that based on my experience, 40 years as a general  
17 contractor working in Oklahoma and other states, that my  
18 understanding and description of ACV, as I've written at  
19 the bottom of Page 3, is accurate, it's an industry  
20 standard, and it's what I see done as a common practice.  
21 Q (By Mr. Snodgrass) But you don't even really  
22 understand how the Xactimate software would do the  
23 calculation different than you did; correct?  
24 MR. KAHN: Objection. Form. Mischaracterizes  
25 testimony.

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1 important that we get somebody that's an Xactimate  
2 expert. Because it seems to me, based on your  
3 experience in the Oklahoma City geographic region, that  
4 perhaps those folks use Xactimate one way to come up  
5 with actual cash value, but perhaps folks in different  
6 parts of the country use Xactimate a different way to  
7 come up with their calculation of actual cash value. Is  
8 that possible?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: Well, certainly anything is  
11 possible, but it's not probable.  
12 Q (By Mr. Snodgrass) Okay. Well, if I told you,  
13 for example, that State Farm does not use Xactimate in  
14 the way that you set forth on Page 3 in the State of  
15 Alabama, would you believe me?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: I don't know if I would or not.  
18 Q (By Mr. Snodgrass) Okay. Well, certainly have  
19 you ever seen State Farm act unreasonable or have an  
20 unreasonable interpretation in a case?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: I don't think so.  
23 Q (By Mr. Snodgrass) So if State Farm interpreted  
24 actual cash value different than you did in the State of  
25 Alabama, you're not here to say that that interpretation

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1 THE WITNESS: Yes. That's mischaracterizing  
2 what I said. I mean, I said that I'm not sure what  
3 Xactware, the company, can and cannot do.  
4 Q (By Mr. Snodgrass) What about Xactimate software  
5 itself? Can you change the definition of the formula  
6 for the definition of ACV in Xactimate software?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: You may be able to do that, yes,  
9 on certain versions.  
10 Q (By Mr. Snodgrass) Can you do it on Version 28?  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: I'm not sure.  
13 Q (By Mr. Snodgrass) Have you ever analyzed whether  
14 or not there's different versions of the ACV formula in  
15 Xactimate?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: I don't think there's a  
18 different formula, as you describe it, inside Xactimate.  
19 Q (By Mr. Snodgrass) Okay. Well, do you understand  
20 that Xactimate might apply different depreciation  
21 settings in arriving at actual cash value?  
22 MR. KAHN: Objection. Form.  
23 THE WITNESS: Well, it isn't the program that  
24 applies anything. It's the operator that would be  
25 making some sort of distinction.



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1 Q (By Mr. Snodgrass) Right. But the program allows  
2 you and has different interpretations of the formula;  
3 right? An operator can put in whatever interpretation  
4 he or she wants to calculate ACV as it relates to  
5 depreciation settings; correct?  
6 MR. KAHN: Objection. Form.  
7 THE WITNESS: I'm not sure if it gives this  
8 wide of a choice selection as you just described or not.  
9 Q (By Mr. Snodgrass) What depreciation settings  
10 does Xactimate version 28 have?  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: I would have to review that. I  
13 have not reviewed that for this matter.  
14 Q (By Mr. Snodgrass) I understand that. But you --  
15 I know that you testified earlier you were an Xactimate  
16 expert. I think later you said maybe you weren't an  
17 Xactimate expert. But let me just ask you this, we're  
18 sitting right here, you issued an expert report, it  
19 touches on Xactimate software, it touches on  
20 depreciation, it touches on labor depreciation. Do you,  
21 as an alleged expert, know what depreciation settings  
22 are in Xactimate 28?  
23 MR. KAHN: Objection. Form.  
24 THE WITNESS: When you say, know what the  
25 settings are, I'm not sure what you mean by that. Like,

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1 Q What does the word "indemnity" mean to you?  
2 MR. KAHN: Object on. Form.  
3 THE WITNESS: Well, as I said before, I am not  
4 here to opine as an attorney or the legal implications  
5 of that word. But as I understand it as a contractor,  
6 as a lay person, I would interpret it to mean to make a  
7 person whole in case of a loss.  
8 Q Would that mean returning them to their same  
9 condition as it was immediately before the loss?  
10 MR. KAHN: Object on. Form.  
11 THE WITNESS: Are you now extending that word  
12 to property coverage?  
13 Q (By Mr. Snodgrass) I'm just -- yeah. I'm not  
14 talking about property coverage specifically. I'm just  
15 talking about indemnity as it relates to a property  
16 loss?  
17 MR. KAHN: Object on. Form.  
18 THE WITNESS: I thought you were asking for a  
19 general interpretation of the word indemnity.  
20 Q (By Mr. SNODGRASS) I was asking for your  
21 interpretation of the word indemnity.  
22 **A My general interpretation as a contractor working**  
23 **in the industry is that it means to correct something**  
24 **and make it right, or make a person whole from a loss.**  
25 Q And do you believe that your interpretation of the

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1 settings on my own computer right now at this moment?  
2 Or what the options are? What do you mean by that?  
3 Q (By Mr. Snodgrass) What options do you have for  
4 depreciation settings in Xactimate 28?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: As I said before, I would need  
7 to go to my office to check that in detail to be able to  
8 answer your question.  
9 Q (By Mr. Snodgrass) You don't know one way or the  
10 other?  
11 MR. KAHN: Objection. Form. Mischaracterizes  
12 his testimony.  
13 THE WITNESS: Yes. I stand by my previous  
14 answer. I can answer that question, but I would have to  
15 study the program itself to be able to give you an  
16 answer.  
17 Q (By Mr. Snodgrass) Do you know whether or not one  
18 of Xactware's options is to interpret actual cash value,  
19 just like the Plaintiffs contend in this case?  
20 MR. KAHN: Objection. Form.  
21 THE WITNESS: As I said before, I'm not sure.  
22 It's something that I would have to check to verify.  
23 Q (By Mr. Snodgrass) Have you ever heard the word  
24 indemnity?  
25 **A Yes.**

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1 word indemnity has the same meaning as the term actual  
2 cash value?  
3 MR. KAHN: Objection. Form. Calls for legal  
4 conclusion.  
5 THE WITNESS: I'm not an attorney, and I'm not  
6 a claim's handling expert, or a policy interpretation  
7 expert. So I don't feel qualified to answer that  
8 question.  
9 Q (By Mr. Snodgrass) I'm not asking you as an  
10 attorney or -- you have come here and said you've got an  
11 interpretation of ACV based on your broad experience,  
12 and you've got insurance restoration business or  
13 something along those lines in Oklahoma City. So I'm  
14 wondering, you've given me your definition of indemnity.  
15 I'm asking whether or not your definition of indemnity  
16 matches your definition of actual cash value. Yes, or  
17 no.  
18 MR. KAHN: Objection. Form. Asked and  
19 answered.  
20 THE WITNESS: I'm not sure.  
21 Q (By Mr. Snodgrass) Would that make a difference  
22 to you?  
23 MR. KAHN: Objection. Form.  
24 THE WITNESS: If indemnity is the same thing  
25 as actual cash value?

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1 Q (By Mr. Snodgrass) Yes.

2 **A Well, in my business, all I'm trying to define for**

3 **the reader, or for those interested parties, would be**

4 **out here in the real world where people define actual**

5 **cash value on a day-to-day basis working in and around**

6 **the industry as common practice and industry standard,**

7 **that's what I've scribed here on Page 3. Whether that's**

8 **the same as indemnity, I'm really not qualified to draw**

9 **that distinction.**

10 Q So if I was to say -- if I was to ask you whether

11 or not the policyholder's interpretation of ACV is

12 closer to indemnity than your interpretation of ACV, you

13 would have no opinion on one way or the other?

14 MR. KAHN: Objection. Form.

15 THE WITNESS: What policy holder and what is

16 their definition?

17 Q (By Mr. Snodgrass) Do you know what the

18 policyholder's definition of ACV is in this case?

19 MR. KAHN: Objection. Form.

20 THE WITNESS: What policy holder?

21 Q (By Mr. Snodgrass) Ms. Mitchell.

22 **A What her interpretation is?**

23 Q Yes.

24 **A I read her deposition. I didn't see her**

25 **interpretation in there.**

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1 to testify that a majority of insurance companies

2 calculate ACV like you recommend in this report;

3 correct?

4 MR. KAHN: Objection. Form.

5 THE WITNESS: Well, what I can tell you is

6 that in all my experience as a restoration contractor

7 working in and around many different carriers, I see

8 material and nonmaterial depreciation being taken on a

9 regular and routine customary practice basis.

10 Q (By Mr. Snodgrass) Have you seen it done where

11 it's not done?

12 MR. KAHN: Objection. Form.

13 THE WITNESS: I may have on occasion.

14 Q (By Mr. Snodgrass) So you understand in the

15 insurance industry there are two competing definitions

16 then?

17 MR. KAHN: Objection. Form.

18 THE WITNESS: I don't know that -- I don't

19 know that that's accurate. I mean, I can only tell you

20 what I've seen in the majority of the times, both

21 material and nonmaterial depreciation is taken.

22 Q (By Mr. Snodgrass) And in some cases it's not;

23 correct?

24 MR. KAHN: Objection. Form.

25 THE WITNESS: As I said, on rare occasion it

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1 Q Well, you read her pleadings in the case in

2 response to State Farm's motion to dismiss; right?

3 **A I likely did. But if it's in there, I did not**

4 **focus on it.**

5 Q Do you know whether or not the purpose of actual

6 cash value is to make -- is to form complete indemnity?

7 MR. KAHN: Objection. Form. Calls for legal

8 conclusion.

9 THE WITNESS: Again, I'm not an attorney. I

10 can't -- I'm not in a position to opine about the legal

11 definitions or nature of those words, as well as I'm not

12 a person here to interpret the policy itself.

13 Q (By Mr. Snodgrass) What depreciation settings

14 should be used in Xactimate 28 to calculate the amount

15 of actual cash value in your world?

16 MR. KAHN: Objection. Form.

17 THE WITNESS: I believe that both labor and

18 nonmaterial depreciation should be taken when

19 formulating an estimate.

20 Q (By Mr. Snodgrass) Do you know how many insurance

21 companies interpret the way you do?

22 MR. KAHN: Objection. Form. Mischaracterizes

23 testimony.

24 THE WITNESS: No. I don't know that.

25 Q (By Mr. Snodgrass) You're certainly not here then

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1 may not have been.

2 Q (By Mr. Snodgrass) What carriers are you familiar

3 with that do not depreciate labor?

4 MR. KAHN: Objection. Form.

5 THE WITNESS: I don't know of one.

6 Q (By Mr. Snodgrass) What cases have you seen? Who

7 are the carriers and when you've seen them?

8 MR. KAHN: Objection. Form.

9 THE WITNESS: It happens so rarely that I

10 don't remember when I saw it. And I don't remember the

11 carrier that was involved.

12 Q (By Mr. Snodgrass) Do you get involved in

13 disputes?

14 MR. KAHN: Sorry, Joe. Whenever -- I don't

15 want to interrupt, but whenever you get a minute for a

16 break, if we can take one, that would be good. But go

17 ahead.

18 THE WITNESS: I'm sorry. Could you restate

19 that?

20 Q (By Mr. Snodgrass) One thing about your formula

21 that confuses me is that you didn't give any temporal

22 information. In other words, you described the process

23 for how you calculate actual cash value, but you haven't

24 described anywhere in your report when actual cash value

25 is supposed to be calculated. With your Oklahoma City



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1 area experience, when are you supposed to calculate  
2 actual cash value?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: Do you mean as an insurance  
5 carrier, when are you supposed to?  
6 Q (By Mr. Snodgrass) Well, no. I mean, based on  
7 your experience, when are you supposed to calculate  
8 actual cash value?  
9 MR. KAHN: Objection. Form. Calls for a  
10 legal conclusion.  
11 THE WITNESS: When is who supposed to do it?  
12 Q (By Mr. Snodgrass) Well, I guess -- I don't know.  
13 Let's take it one step at a time. Maybe you don't know.  
14 Who calculates actual cash value usually?  
15 MR. KAHN: Objection. Form.  
16 THE WITNESS: Many times it's the insurance  
17 adjuster. On occasion the restoration contractor might  
18 be involved in calculating it.  
19 Q (By Mr. Snodgrass) Okay. Let's just talk about  
20 the insurance adjuster. When, in your Oklahoma City  
21 experience, does an insurance adjuster calculate actual  
22 cash value?  
23 MR. KAHN: Objection. Form  
24 THE WITNESS: In the process of adjusting the  
25 claim.

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1 responsibilities of an insurance carrier to calculate  
2 actual cash value.  
3 Q (By Mr. Snodgrass) So you don't know, for  
4 example, whether or not you're just supposed to look at  
5 the circumstances on the date of the loss, or whether  
6 you're allowed to look at circumstances months or years  
7 after the fact; correct?  
8 MR. KAHN: Object on. Form.  
9 THE WITNESS: You mean as to when it has to be  
10 calculated?  
11 Q (By Mr. Snodgrass) Yeah.  
12 **A Again, I do not know what the legal requirements**  
13 **are on the time frame in which ACV has to be calculated.**  
14 **I know neither the legal requirements nor the**  
15 **contractual requirements.**  
16 Q Well, can actual cash value change over time? In  
17 other words, let's say I have a loss on January 1st,  
18 2017, can that ACV change over the years of that loss?  
19 MR. KAHN: Object on. Form. Incomplete  
20 hypothetical.  
21 THE WITNESS: Well, I'm a little bit hung up  
22 on when you say years after the loss. I'm not sure what  
23 you mean by that.  
24 Q (By Mr. Snodgrass) In other words, can the actual  
25 cash value of a January 1st loss be \$10,000 on March

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1 Q (By Mr. Snodgrass) I understand that. But when  
2 is that supposed to happen?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: I do not know the legal or  
5 contractual requirements of when an insurance carrier is  
6 supposed to do that.  
7 Q (By Mr. Snodgrass) Well, isn't that critical to  
8 understanding your opinions? Because you render a lot  
9 of opinions in this case that talk about facts and  
10 circumstances long after the loss. So I guess I'm kind  
11 of confused. Is actual cash value supposed to be  
12 calculated as of the date of the loss? Or is it  
13 something that can change over the years?  
14 MR. KAHN: Objection. Form. Calls for a  
15 legal conclusion.  
16 THE WITNESS: Yeah. I think there's two or  
17 three questions in there. Could you break it down a  
18 little bit?  
19 Q (By Mr. Snodgrass) When you do this process of  
20 calculating ACV, are you supposed to use a certain time  
21 period in making that calculation?  
22 MR. KAHN: Objection. Form. Calls for a  
23 legal conclusion.  
24 THE WITNESS: Again, I think that goes to my  
25 answer before. I do not know the contractual or legal

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1 1st, and be \$12,000 on June 1st, and be \$13,000 on  
2 August 1st, and be \$7,000 on December 1st? In other  
3 words, does actual cash value flow and change over time?  
4 MR. KAHN: Objection. Form. Incomplete  
5 hypothetical.  
6 Q (By Mr. Snodgrass) If you don't know, it's fine.  
7 MR. KAHN: Let him answer the question.  
8 THE WITNESS: It certainly can change over  
9 time. In my experience as a restoration contractor  
10 working in the industry, it typically does change over  
11 time, depending on the circumstances which have to be  
12 examined on a claim-by-claim basis.  
13 Q (By Mr. Snodgrass) Okay. And so some of the  
14 circumstances that might change actual cash value of a  
15 January 1st loss are, for example, if the labor rate  
16 goes through the roof in June, that might drive the  
17 actual cash value January 1st loss up; correct?  
18 MR. KAHN: Objection. Form. Incomplete  
19 hypothetical.  
20 THE WITNESS: I haven't ever experienced that.  
21 I've not seen a labor rate go up that in and of itself  
22 affected actual cash value.  
23 Q (By Mr. Snodgrass) Well, sure. But you  
24 understand that in a catastrophe labor rates might be  
25 driven up in a certain geographic area; correct?

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1 **A That can certainly happen from time to time.**  
2 Q Right. So if we have a January 1 loss and don't  
3 get around to repairing it for a few months then a  
4 catastrophe hits an area, that might drive the labor  
5 rate up in a market; correct?  
6 MR. KAHN: Objection. Form.  
7 THE WITNESS: As I said before, a catastrophe  
8 may change the labor rates in a various locale.  
9 Q (By Mr. Snodgrass) Right. So under your  
10 interpretation, you can have an actual cash value loss  
11 of \$10,000 on January 1st, 2017, but based on  
12 circumstances after the loss, that actual cash value  
13 might go up or down; right?  
14 MR. KAHN: Objection. Form. Asked and  
15 answered.  
16 THE WITNESS: Yes. I think it's depends on  
17 the circumstances following the loss. There are a lot  
18 of variables in there in your question. That would have  
19 to be analyzed on a claim-by-claim basis.  
20 Q (By Mr. Snodgrass) Right. So if for example  
21 somebody has a \$10,000 loss on January 1, maybe by  
22 October 1 it's really not \$10,000 any more, it's \$9,000;  
23 right? According to you?  
24 MR. KAHN: Objection. Form. Incompetent  
25 hypothetical.

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1 THE WITNESS: Well, as we've said, there might  
2 be some circumstances in there that would -- that would  
3 change the actual cash value up or down, or perhaps it  
4 would be the same. That would have to be examined on a  
5 claim-by-claim basis.  
6 Q (By Mr. Snodgrass) Right. So you're opin on is  
7 because over time actually cash value can go up and down  
8 over the years of a January 1, 2017, loss, t's really  
9 impossible for the plaintiff's to have their claim;  
10 right? Because all these different things can happen  
11 that can change the ACV over the years; right?  
12 MR. KAHN: Objection. Form. Mischaracterizes  
13 testimony.  
14 THE WITNESS: Yeah. I'm not sure I understand  
15 your quest on.  
16 Q (By Mr. Snodgrass) Well, give me some examples  
17 about how actual cash value of a January 1st, 2017,  
18 loss, how that can change over the years?  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: Well, I'm really hung up on when  
21 you continue to say over the years, because you're  
22 recitation of the different months did not even go over  
23 one year. So how does that square with over the years?  
24 Can you clarify that?  
25 Q (By Mr. Snodgrass) Sure. I'm just asking you,

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1 can actual cash value of a loss change over the years?  
2 MR. KAHN: Objection. Form. Asked and  
3 answered.  
4 THE WITNESS: I would be comfortable saying,  
5 as I have said, actual cash value can change depending  
6 on certain circumstances that are claim specific, and  
7 that that can happen over time. Yes. That occurs.  
8 Q (By Mr. Snodgrass) Give me some of the  
9 circumstances that can change the actual cash value over  
10 time.  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: Well, one would be the -- once  
13 the project work starts, add tional damages which were  
14 unforeseen at the time that the first initial estimate  
15 was written, additional damages are discovered and need  
16 to be added to the claim in the form of a supplemental  
17 estimate.  
18 Q (By Mr. Snodgrass) Okay. So t can go up.  
19 Actual cash value can go up. What other circumstances  
20 might change an actual cash value calculation over the  
21 year?  
22 MR. KAHN: Objection. Form.  
23 THE WITNESS: Perhaps an item that was  
24 originally in an estimate, estimated to be, let's say,  
25 \$75. We'll say the cleaning of a bathtub after a fire

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1 had occurred, that it was later learned that the bathtub  
2 needed to be replaced for \$750, that would cause the  
3 actual cash value to change.  
4 Q (By Mr. Snodgrass) Another example of it going  
5 up. So could market prices change the actual cash value  
6 amount over the years?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: Well, I mean, it kind of depends  
9 on how -- a variable in there that we don't have control  
10 over is, how long it might take for a pol cyholder to  
11 actually get started with the work.  
12 Q (By Mr. Snodgrass) It's a good one. Okay. Good  
13 example. So if a policyholder doesn't start working on  
14 the loss right away, that can change the actual cash  
15 value amount over the years; right?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: Again, I'm still hung up on your  
18 use of over the years. That's really not an appropriate  
19 characterizat on.  
20 Q (By Mr. Snodgrass) Is there a point in time when  
21 actual cash value becomes fixed or can it change over  
22 years?  
23 MR. KAHN: Objection. Form.  
24 Q (By Mr. Snodgrass) In your opinion and under your  
25 formula, is there a 12-month limitation on actual cash

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1 value changes? Or what is the temporal limitations that  
2 you believe exist?

3 MR. KAHN: Objection. Form.

4 THE WITNESS: I don't know.

5 Q (By Mr. Snodgrass) Okay. So actual cash value --  
6 how far out do you know for sure it can change? Five  
7 years? The actual cash value change over five years?  
8 Or is that too far out?

9 MR. KAHN: Objection. Form.

10 THE WITNESS: Well, there may be provisions of  
11 the policy that -- among carriers that govern that. And  
12 that time limit or time frame is beyond what I'm  
13 qualified to testify about.

14 Q (By Mr. Snodgrass) Okay. So you believe there  
15 might be a time limit, but you're not really sure?

16 MR. KAHN: Objection. Form. Mischaracterizes  
17 testimony.

18 THE WITNESS: The policies in effect may  
19 govern that. But that's not something that I focused  
20 on.

21 MR. KAHN: John, would this be a good time for  
22 a break now?

23 MR. SNODGRASS: Couple more questions.

24 Q (By Mr. Snodgrass) Based on your Oklahoma City  
25 experience, how far out has it gone in your experience

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1 Q (By Mr. Snodgrass) So ACV could change even  
2 longer than two years perhaps?

3 MR. KAHN: Objection. Form.

4 THE WITNESS: As I said, I really can't give  
5 you much insight on that because I haven't focused on  
6 that as a contractor.

7 Q (By Mr. Snodgrass) Well, the reason I'm focusing  
8 on it is you render some opinions in this case, and we  
9 talk about some claim files where you have an ACV  
10 changing over time. And I'm just wondering, in your  
11 interpretation, how far out you think that can go. But it  
12 doesn't sound like you know for sure there's a limit.

13 MR. KAHN: Objection. Form. Mischaracterizes  
14 his testimony. You can answer.

15 THE WITNESS: Is that a question?

16 Q (By Mr. Snodgrass) Yes.

17 **A What is the question?**

18 Q You don't know how many years out ACV can change,  
19 as you sit here today; right?

20 MR. KAHN: Objection. Form. Asked and  
21 answered.

22 THE WITNESS: I think I've already answered  
23 that.

24 Q (By Mr. Snodgrass) Then please tell me, you don't  
25 know how many years ACV can change; correct?

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1 with the actual cash value changing? In other words,  
2 have you seen actual cash value change over three or  
3 four or ten years? What have you seen in your  
4 experience?

5 MR. KAHN: Objection. Form.

6 THE WITNESS: The vast majority of my  
7 experience in working with insurance-related losses is  
8 that that time frame at which the ACV might change, is  
9 primarily within the first six months following a loss.

10 Q (By Mr. Snodgrass) Fine. I'm getting at the  
11 majority of cases --

12 MR. KAHN: Joe, hang on. Let him finish his  
13 answer.

14 THE WITNESS: As I was trying to say, the  
15 majority of those -- if the ACV is going to have any  
16 sort of movement at all, that that would play itself out  
17 in the first six months, and then from that point it  
18 continues to taper off. Probably it goes to zero or  
19 near zero at about two years.

20 Q (By Mr. Snodgrass) So the furthest you've seen  
21 ACV change is over a period of two years?

22 MR. KAHN: Objection. Form.

23 THE WITNESS: I don't know. I mean, I haven't  
24 ever really taken notice of that to be able to give you  
25 an answer.

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1 MR. KAHN: Objection. Form. Asked and  
2 answered.

3 THE WITNESS: As I told you before, I do not  
4 interpret the insurance policies. I do not know what  
5 provisions there are in there that would govern how long  
6 into the future that the ACV may change. So I'm really  
7 not in a position to answer that.

8 MR. SNODGRASS: Okay. That's good. We can  
9 take a break.

10 (A break was had; after which the following  
11 took place:)

12 Q (By Mr. Snodgrass) Mr. Berryman, can you please  
13 turn to Page 17 of your opinion?

14 **A Yes.**

15 Q If I can try to explain the format of your report.  
16 It looks to me like you have primary opinions, and then  
17 you list subsidiary opinions. At least I think that's  
18 how it is because you have an Opinion 1, then you have  
19 subsidiary opinions through 1.7.9. And then for Opinion  
20 2, for example, you have subsidiary opinions through 2.7  
21 and so on. Do I have that generally right?

22 **A Yes. Those could be considered to be subsidiary  
23 opinions, or further basis in support of the main  
24 opinions, such as Opinion Number 1 or Opinion Number 2.**

25 Q Okay. Now, looking at Opinion Number 1, I'm

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1 assuming a few things, and you please correct me if I'm  
2 wrong. I'm assuming for Opinion 1 you are using your  
3 own definitions of ACV, RCV, and depreciation for  
4 Opinion 1; is that correct?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: Yes. I am using the -- as I use  
7 the words ACV, RCV in the Opinion Number 1, I am using  
8 those according to the definition as I understand them.  
9 How they are used on a day-to-day basis in the real world  
10 where I do my work on a daily basis.  
11 Q (By Mr. Snodgrass) And that specifically you're  
12 using the same definitions used on Page 3 that we've  
13 discussed before; correct?  
14 **A If you want to call that Page 4, definitions or**  
15 **characterizations and/or processes by which they are**  
16 **established, then yes, they are related to that.**  
17 Q Well, I just want to make sure that I understand.  
18 First off, it's Page 3 where you have these definitions.  
19 I think I forgot to ask you. Are the opinions you give  
20 for RCV, ACV, and depreciation on Page 3, are they the  
21 same terms as you define them in Opinion 1?  
22 MR. KAHN: Objection. Form.  
23 THE WITNESS: The ones I describe on Page 3,  
24 the processes, how they are arrived at, what they are,  
25 and how I speak about them, starting on Page 17 with

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1 THE WITNESS: I'm kind of hung up on you  
2 saying it's based on it. I mean, it does take into  
3 consideration my experience that ACV does change over  
4 time.

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1 Opinion 1 and opinions thereafter, yes, I mean them to  
2 be the same or very similar.  
3 Q (By Mr. Snodgrass) And in particular, in addition  
4 to the way you define ACV, RCV, and depreciation,  
5 Opinion 1 also relies upon your theory that actual cash  
6 value can change over the years; correct?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: Well, again, I don't know that  
9 it changes over the years. But I do believe that RCV  
10 and ACV does change as ongoing until completion.  
11 Q (By Mr. Snodgrass) Well, I think you said that  
12 ACV can change up to two years, in your experience;  
13 correct?  
14 MR. KAHN: Objection. Form. Mischaracterizes  
15 the testimony.  
16 THE WITNESS: Yes. I think I characterized it  
17 differently than that but.  
18 Q (By Mr. Snodgrass) Well, let me ask you this, are  
19 you still of the opinion after lunch as you were before  
20 lunch that ACV can change over time?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: Yes, I am.  
23 Q (By Mr. Snodgrass) Okay. Does Opinion 1, is it  
24 based upon your opinion that ACV can change over time?  
25 MR. KAHN: Objection. Form.

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11 MR. SNODGRASS: Move to strike as  
12 non-responsive.  
13 Q (By Mr. Snodgrass) Mr. Berryman, I'm asking you,  
14 does Opinion 1, is it based upon your theory that actual  
15 cash value can change over the years? Yes or no?  
16 MR. KAHN: Objection. Form. Asked and  
17 answered.  
18 THE WITNESS: Yes. I think I've already  
19 answered that.  
20 Q (By Mr. Snodgrass) So is it a yes or a no? Or  
21 you can't answer yes or no?  
22 MR. KAHN: Objection. Form. Asked and  
23 answered.  
24 THE WITNESS: It's the answer that I gave  
25 before when you asked that question.

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1 Q (By Mr. Snodgrass) And I don't know. Is that  
2 answer an affirmative or in the negative or something  
3 else?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: It's what I answered before. We  
6 could have the court reporter read it back.  
7 Q (By Mr. Snodgrass) I don't want the court  
8 reporter to read back. I'm trying to understand.  
9 That's why I asked you another question. Is Opinion 1  
10 based upon your theory that ACV can change over the  
11 years. Yes or no? Or you don't know what your opinion  
12 is?  
13 MR. KAHN: Objection. Form. Asked and  
14 answered. And it's argumentative.  
15 THE WITNESS: It's neither of those three  
16 choices that you gave me.  
17 Q (By Mr. Snodgrass) Do you know what your opinion  
18 is in Opinion 1?  
19 **A Yes. Would you like for me to read it?**  
20 Q No. I would like to know whether or not it is  
21 based in whole or in part on your theory that actual  
22 cash value can change over the years.  
23 MR. KAHN: Objection. Form. Asked and  
24 answered.  
25 THE WITNESS: Well, the changing of RCV and

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1 policyholder the reasonable and necessary costs of what  
2 it -- the actual reasonable and necessary costs to  
3 restore damages to their property. So that's the  
4 real -- the real test as to whether or not property  
5 amount of money has been provided to restore the  
6 property or not. Not so much on the estimate. Because  
7 as I've said repeatedly in my report, the estimate is  
8 exactly that, it's an estimate. It's a starting point.  
9 Q (By Mr. Snodgrass) Let me read a sentence to you  
10 and you can tell me whether you agree with this opinion  
11 or disagree with this opinion. Quote: What the insured  
12 actually spends to repair its property does not affect  
13 its right to recover the actual cash value of its loss,  
14 as actual cash value is not calculated based upon what  
15 the insured ultimately pays to repair its property.  
16 Unquote.  
17 I can read that back if you want.  
18 **A Could you?**  
19 Q Sure. Quote: What the insured actually spends to  
20 repair its property does not affect its right to recover  
21 the actual cash value of its loss. As actual cash value  
22 is not calculated based upon what the insured  
23 ultimately pays to repair its property, unquote.  
24 Do you agree with that opinion or disagree  
25 with that opinion?

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1 ACV over time as additional information is brought forth  
2 during the claims process is not a theory. It's what  
3 I've actually seen on a day-to-day basis working in the  
4 industry.  
5 Q (By Mr. Snodgrass) I say theory, I mean --  
6 **A I'm not finished with my answer yet. So first of**  
7 **all it's not a theory. And then secondly, that opinion**  
8 **does take into account, in part, my experience that RCV**  
9 **and ACV can change over time as new information comes**  
10 **forth on what actual costs really are, of what the**  
11 **actual damages really are. When further information is**  
12 **put forth on what will actually be required to restore**  
13 **the property, that can cause changes in the RCV and the**  
14 **originally estimated RCV and the originally estimated**  
15 **ACV.**  
16 Q Let me ask you a question; does what a  
17 policyholder actually spends to repair his or her  
18 property affect the sufficiency of the actual cash value  
19 payment in your mind?  
20 MR. KAHN: Objection. Form. Calls for legal  
21 conclusion.  
22 THE WITNESS: Well, again, I'm opining as a  
23 contractor. But based on my experience working in and  
24 around State Farm as well as other carriers, it's my  
25 understanding, day-to-day, that they pay to a

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1 MR. KAHN: Objection. Form. Calls for a  
2 legal conclusion.  
3 THE WITNESS: Yes. I think it calls for me to  
4 try to interpret someone's policy. But I can tell you  
5 that my experience on a day-to-day basis is that State  
6 Farm and other carriers endeavor to pay the necessary  
7 and reasonable costs to restore the damages.  
8 Q (By Mr. Snodgrass) Okay. So does what a  
9 policyholder actually pay affect his or her right to an  
10 actual cash value payment? Yes or no or you don't know?  
11 MR. KAHN: Objection. Form. Calls for a  
12 legal conclusion.  
13 THE WITNESS: Too many variables in there when  
14 you talk about somebody's rights. I don't know what  
15 their rights are under a policy.

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1 [REDACTED]  
2 Q (By Mr. Snodgrass) So that isn't your opinion  
3 that the actual costs of repair can determine the actual  
4 cash value of a loss?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: It's my understanding that  
7 actual cash value is determined very early on, most of  
8 the time on an estimated basis before the work ever  
9 starts. But then after the work starts and the real  
10 costs come in, then the real cost becomes, in my  
11 experience, a more definitive statement of what it  
12 actually took to repair the property and restore the  
13 property for the policyholder.  
14 Q (By Mr. Snodgrass) That's what I'm asking. I'm  
15 asking you, does that affect the right to recover actual  
16 cash value payment? Yes or no or you don't know?  
17 MR. KAHN: Objection. Form. Calls for legal  
18 conclusion.  
19 THE WITNESS: Again, I'm not here to opine  
20 about what policyholder's rights are under a particular  
21 policy.  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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1 question was, are you saying that actual cost takes  
2 precedent over the actual cash value calculation?  
3 MR. KAHN: Object on. Form. Calls for legal  
4 conclusion.  
5 THE WITNESS: When you say actual cash value,  
6 are you talking about what was estimated very early on  
7 in the loss?  
8 Q (By Mr. Snodgrass) Right. When State Farm takes  
9 a position as to what actual cash value is, I'm  
10 wondering whether or not that takes precedent over lower  
11 actual costs of repair in your world?  
12 MR. KAHN: Object on. Form. Calls for legal  
13 conclusion.  
14 THE WITNESS: And by that do you mean what is  
15 a carrier obligated to do?  
16 Q (By Mr. Snodgrass) No. I mean, I know that if I  
17 ask you that, you'll tell me you don't have an opinion  
18 on that. So I'm asking you, based upon your Oklahoma  
19 City area experience.  
20 MR. KAHN: Object on. Same objection.  
21 THE WITNESS: Based on my experience over the  
22 last 40 years working in as many as 22 different states,  
23 I've routinely seen carriers pay for the actual cost,  
24 the actual necessary cost, necessary and reasonable  
25 cost, to restore property. That's the ultimate measure

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1 [REDACTED]  
2 [REDACTED]  
3 Q So you know that we've challenged the sufficiency  
4 of the initial actual cash value payment for that  
5 policyholder; right?  
6 MR. KAHN: Objection. Form. Calls for legal  
7 conclusion.  
8 THE WITNESS: I suppose you have.  
9 Q (By Mr. Snodgrass) Okay. So I'm wondering in  
10 your world, based on all your experience, what is the  
11 policyholder entitled to? Full actual cash value  
12 payment for the actual costs of repairs, or something  
13 else?  
14 MR. KAHN: Objection. Form. Calls for legal  
15 conclusion.  
16 THE WITNESS: As I've said, I'm not in a  
17 position to interpret the policies or the legality of  
18 any matter. I'm simply saying from my experience on a  
19 day-to-day basis with State Farm and other carriers,  
20 working out in what I'm going to call the "real world,"  
21 as a construction restoration person, what I see  
22 routinely done is that the actual cost of the repair is  
23 what takes precedence over having fully paid for the  
24 restoration of property.  
25 Q (By Mr. Snodgrass) That wasn't my question. My

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1 of what should be paid.  
2 Q (By Mr. Snodgrass) Well, do you understand that  
3 that's what should be paid for RCV or ACV?  
4 MR. KAHN: Objection. Form. Calls for legal  
5 conclusion.  
6 THE WITNESS: Again, I'm talking about  
7 necessary and reasonable cost. I've worked -- it was  
8 actually performed and needed to be performed to restore  
9 the property, that and my experience has been that the  
10 ultimate measure of what carriers typically pay.  
11 Q (By Mr. Snodgrass) That's fine. But I'm just  
12 trying to figure out, is that then RCV or ACV?  
13 **A I think that would be considered RCV.**  
14 Q Okay. Do you understand that there could be  
15 circumstances where the actual cost to repair could be  
16 less than ACV?  
17 MR. KAHN: Objection. Form.  
18 THE WITNESS: And by that, do you mean the  
19 initially estimated ACV?  
20 Q (By Mr. Snodgrass) Yes. I mean the initial  
21 estimated ACV.  
22 **A Yes. Sometimes the actual cost of restoring a**  
23 **property can be less than the initially estimated ACV.**  
24 Q Okay. So does that mean then the policyholder has  
25 to give the insurance company back the extra money that



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1 they policyholder received as an ACV payment?

2 MR. KAHN: Objection. Form. Calls for legal

3 conclusion.

4 THE WITNESS: Again, I don't know what the

5 duties of the policyholder might be under the insurance

6 contract. But I can tell you that I -- routinely I have

7 not seen that done. I have not seen carriers, State

8 Farm or others, ask for any money back.

9 Q (By Mr. Snodgrass) You've never seen that; right?

10 MR. KAHN: Objection. Asked and answered.

11 THE WITNESS: In my experience, I have not

12 seen that.

13 Q (By Mr. Snodgrass) Okay. So a policyholder then

14 would want to get as much money as possible for an

15 actual cash value payment; correct? Because insurance

16 companies don't ask for that money back; right?

17 MR. KAHN: Objection. Form. Speculation.

18 THE WITNESS: I'm not sure that I can opine

19 for all policyholders to speculate what they might want

20 at various times and why.

21 Q (By Mr. Snodgrass) Do you know why insurance

22 companies don't ask for that money back?

23 MR. KAHN: Objection.

24 Q (By Mr. Snodgrass) Do you know why that it could

25 be that they have to pay actual cash value as a minimum

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1 payments, et cetera. Haven't you ever had curios ty as

2 to why insurance companies always pay a minimum of

3 actual cash value?

4 MR. KAHN: Objection. Form. Mischaracterizes

5 testimony. You can answer.

6 THE WITNESS: I really can't remember ever

7 being cur ous about it. I'm not saying that perhaps

8 that hasn't crossed my mind. But I never have pursued

9 t further than that if it ever d d.

10 Q (By Mr. Snodgrass) But you would agree with me

11 your 40-year experience, it's crystal clear, minimum

12 payment is always actual cash value; correct?

13 MR. KAHN: Objection. Form. Calls for legal

14 conclusion.

15 THE WITNESS: As I said before, the

16 replacement cost value as expressed by what the

17 reasonable and necessary cost was to restore the

18 property is easily what's most important about

19 determining whether a pol cyholder has been properly

20 compensated or not for a loss.

21 Q (By Mr. Snodgrass) Now, you also, I'm sure, dealt

22 w th actual cash value payments -- actual cash value

23 pol cies. In other words, policies that don't have

24 replacement cost coverage; correct?

25 **A I have been involved in some losses that have that**

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1 payment?

2 MR. KAHN: Objection. Form. Calls for a

3 legal conclusion. Foundation.

4 THE WITNESS: I don't know why insurance

5 companies do not ask for that money back.

6 Q (By Mr. Snodgrass) Does that seem to make sense

7 that in your 40 years, because in 40 years you've never

8 ever seen an insurance company ask for money back that

9 was paid as an actual cash value payment? Does maybe

10 that trigger the possibility in your mind that actual

11 cash value is always a minimum payment owned under

12 insurance policy? Is that possible?

13 MR. KAHN: Objection. Form. Calls for legal

14 conclusion.

15 THE WITNESS: I don't feel like I'm in a

16 position to answer that. I don't feel like I'm

17 qualified to interpret the policy or talk about

18 carrier's rights or responsibility, or the

19 policyholder's rights or responsibilities under the

20 contract.

21 Q (By Mr. Snodgrass) I know, but you've come here

22 with your 40 years of experience, the last few years

23 exclusively in Oklahoma City, and not having been in

24 Mississippi for over 20 years, but you've come here and

25 you've made some opinion about sufficiency of ACV

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1 **type of policy from time to time.**

2 Q And in those cases when there's only an actual

3 cash value policy, the minimum payment's always actual

4 cash value; correct?

5 MR. KAHN: Objection. Form. Calls for legal

6 conclusion.

7 THE WITNESS: I don't know that I was ever

8 close enough to the policies themselves and what they

9 said, what the provisions of the policies were, what

10 they required to be able to answer that.

11 Q (By Mr. Snodgrass) So it would be fair to state

12 that certainly you don't have a lot of experience with

13 actual cash value policies; correct?

14 MR. KAHN: Objection. Form. Mischaracterizes

15 testimony.

16 THE WITNESS: Certainly not as much as I have

17 with replacement cost policies.

18 Q (By Mr. Snodgrass) Okay. And to be more

19 specific, as a contractor you're almost always dealing

20 with replacement cost coverage, because one of the

21 things replacement cost coverage is for is for the cost

22 of the contractor to come in and fix property; correct?

23 MR. KAHN: Objection. Form.

24 THE WITNESS: I want to be careful, because I

25 don't -- I don't often get involved in the policy

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1     itself. But it is true that the majority of the  
2     projects that I've done as restoration contractor  
3     involve replacement cost policies.  
4     Q     (By Mr. Snodgrass) Okay. Have you ever been  
5     involved in a policyholder dispute about actual cash  
6     value other than your work in the labor depreciation  
7     class actions?  
8     **A     I'm not sure. I just don't -- there are lots of**  
9     **different insurance disputes. And I don't recall one**  
10    **that involved an actual cash value policy.**  
11    Q     Okay. All right. What percentage of your work do  
12    you think even deals with actual cash value policies?  
13    **A     I'm not able to estimate that.**  
14    Q     Okay. So you would agree with me that when it  
15    comes to actual cash value payments and actual cash  
16    value policies, you really don't have a lot of  
17    experience?  
18    MR. KAHN: Objection. Form. Mischaracterizes  
19    testimony.  
20    THE WITNESS: You're asking really two  
21    questions in one. Can you split that into two pieces?  
22    Q     (By Mr. Snodgrass) Sure. As you sit here today,  
23    you can't ever recall being involved in a dispute over  
24    an actual cash value payment, other than the lawsuits  
25    involving labor depreciation; correct?

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1     depreciation class actions for State Farm, have you ever  
2     testified about actual cash value payments and the  
3     sufficiency thereon. So you've identified all the State  
4     Farm labor depreciation class act ons. I'm asking you  
5     exclusive of those, have you ever testified before about  
6     actual cash value payments?  
7     MR. KAHN: Object on. Form.  
8     THE WITNESS: Yes, I have.  
9     Q     (By Mr. Snodgrass) Can you identify those cases  
10    for me?  
11    **A     I can't with specificity. But I can say that many**  
12    **times the cases that I testify in have to do with the**  
13    **sufficiency of the calculated RCV, and the sufficiency**  
14    **of the calculated ACV as part of the -- as part of the**  
15    **factors to be examined and considered.**  
16    Q     As you sit here today, can you identify any case  
17    for me where you've testified as to the sufficiency of  
18    an ACV payment, other than the labor depreciation class  
19    act ons?  
20    MR. KAHN: Object on. Asked and answered.  
21    Q     (By Mr. Snodgrass) And by identify, I mean point  
22    to me in any one of the cases identified in your report  
23    where you actually dealt with actual cash value,  
24    sufficiency of that same, in your report.  
25    MR. KAHN: Object on. Form.

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1     MR. KAHN: Objection. Form.  
2     THE WITNESS: Well, again, that's a convoluted  
3     question because I've been obviously involved in, many  
4     times, many insured losses where actual cash value is at  
5     work. I've also been involved in some construct on  
6     matters where there was an actual cash value versus  
7     actual cash policy -- cash value policy versus  
8     replacement cost value policy. I've done that as well.  
9     Q     (By Mr. Snodgrass) So have you ever -- in any  
10    case that you can identify for me, have you ever opined  
11    about an actual cash value payment before?  
12    MR. KAHN: Objection. Form.  
13    THE WITNESS: I believe that I have given  
14    testimony and have cases where there are issues  
15    concerning actual cash value and actual cash value  
16    payments.  
17    Q     (By Mr. Snodgrass) What cases are those?  
18    **A     The ones that come to mind are Dennington et al**  
19    **versus State Farm; Lebriar versus State Farm; Bailey et**  
20    **al versus State Farm.**  
21    MR. KAHN: Mike, before you go further, I just  
22    want to caut on you not to disclose any cases where  
23    you've not been disclosed as an expert. Go ahead.  
24    Q     (By Mr. Snodgrass) First off, I think my  
25    question, Mr. Berryman, was, other than the labor

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1     THE WITNESS: There isn't one that I can  
2     identify and be certain of.  
3     MR. KAHN: Joe, give me one second. I think  
4     they shut off the air in this room. Going to ask them  
5     to turn it back on.  
6     (A short break was had; after wh ch the  
7     following took place:)  
8     Q     (By Mr. Snodgrass) Mr. Berryman, do you know what  
9     depreciation settings you use when you calculate actual  
10    cash value?  
11    MR. KAHN: Objection. Form.  
12    THE WITNESS: When you mean depreciat on  
13    settings, do you mean what percentages?  
14    Q     (By Mr. Snodgrass) No. I mean the depreciat on  
15    opt ons in Xactimate version 28?  
16    MR. KAHN: Objection. Form.  
17    THE WITNESS: Whenever I'm called upon to  
18    calculate depreciation, I depreciate both material and  
19    nonmaterial tems.  
20    Q     (By Mr. Snodgrass) What about the other tems?  
21    Do you depreciate anything else?  
22    MR. KAHN: Objection. Form.  
23    THE WITNESS: Such as what?  
24    Q     (By Mr. Snodgrass) Well, you tell me.  
25    MR. KAHN: Objection. Form.



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1 THE WITNESS: Well, the -- I don't think there  
2 is anything else besides material or nonmaterial items.  
3 Q (By Mr. Snodgrass) And you're saying that based  
4 on your experience with Xactimate?  
5 **A I suppose there may be attendant sales taxes and**  
6 **or overhead and profit that flows along with the**  
7 **depreciation of material and nonmaterial items.**  
8 Q Do you depreciate those items?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: Yes. Generally speaking.  
11 Q (By Mr. Snodgrass) Is there any other category of  
12 items that you depreciate?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: Not that comes to mind, as I sit  
15 here.  
16 Q (By Mr. Snodgrass) Can you think of any  
17 justification or depreciating anything else?  
18 MR. KAHN: Objection. Form. Calls for legal  
19 conclusion.  
20 THE WITNESS: I'm not sure how to answer that.  
21 Q (By Mr. Snodgrass) Well, I'm just asking you, can  
22 you think as you sit here today of all the categories  
23 that make up depreciation, can you think of anything  
24 else that you think should be depreciated? It's my one  
25 time to depose you.

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: Well, I have listed as best I  
3 can today as I sit here the things that I think would be  
4 subject to depreciation.  
5 Q (By Mr. Snodgrass) So I assume if you didn't list  
6 anything for me today, you would think that it should  
7 not be depreciated?  
8 MR. KAHN: Objection. Form.  
9 Mischaracterizes.  
10 THE WITNESS: No. But if you have something  
11 specifically in mind you want to ask me about, I can  
12 answer it.  
13 Q (By Mr. Snodgrass) No. I don't want -- I don't  
14 want -- I don't want me to suggest something to you. I  
15 want you to think what makes sense, what should or  
16 should not be depreciated and tell me. And if you don't  
17 know, that's fine. You don't know what should or  
18 shouldn't be depreciation. If you do know, tell me.  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: What I typically depreciate are  
21 material and nonmaterial items, and the sales tax and  
22 overhead profit that flows along with those on a  
23 proportional basis.  
24 Q (By Mr. Snodgrass) Anything else?  
25 **A That's all I can think of as I sit here.**

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1 Q Can you think of anything else that should be  
2 depreciated? That you can justify being depreciated?  
3 MR. KAHN: Objection. Form. Asked and  
4 answered. Calls for legal conclusion.  
5 THE WITNESS: I typically depreciate material  
6 and nonmaterial items. And the sales tax and overhead  
7 and profit that flows along with those on a proportional  
8 basis.  
9 Q (By Mr. Snodgrass) And so that is your  
10 experience. Your Oklahoma City experience is those four  
11 items are the items that should be depreciated in  
12 Xactimate 28; correct?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: Those are the items that in my  
15 40 years experience having worked in 22 different  
16 states, that's been my experience on what is routinely  
17 depreciated by State Farm and most carriers that I've  
18 worked in and around.

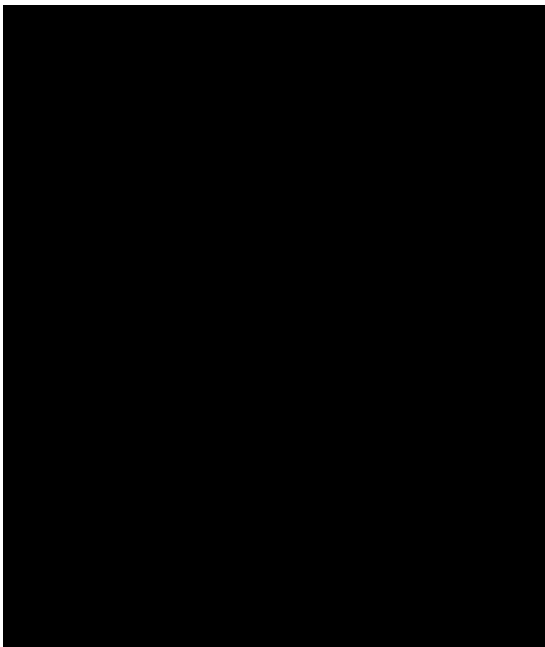
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Q So I'm assuming that's dealing with your  
experience as a contractor in Oklahoma City the last  
three years; correct?  
MR. KAHN: Objection. Form.  
THE WITNESS: No. That's a wrong assumption.

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Q (By Mr. Snodgrass) I'm not asking you to. I'm  
asking you, do you know whether or not the policy  
requires her to come out-of-pocket or State Farm to come  
out-of-pocket?  
MR. KAHN: Objection. Form. Calls for a  
legal conclusion.  
THE WITNESS: Again, I'm not here to opine  
about provisions of her policy. I'm not a pol cy  
expert. I don't feel like I'm qualified to say what  
State Farm's obligations are or what the policy tells  
the pol cyholder to do and to not do.  
Q (By Mr. Snodgrass) What have you done in the  
State of Mississippi to determine whether or not this  
opinion in the second sentence of Opin on 2 applies?  
MR. KAHN: Objection. Form.  
THE WITNESS: Based on my experience, working  
in the industry, including Mississippi, I believe that  
my second sentence that starts with the word "except" is  
factual. And forms part of my opinion in Opinion Number  
2.  
Q (By Mr. Snodgrass) And I understand that. I'm  
asking you what specifically. You told me earlier you  
haven't worked in Mississippi in over 20 years. So I'm  
trying to figure out what you did. In other words, did  
you conduct a survey of claim files to try to determine

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Q (By Mr. Snodgrass) Okay. Let's make it true or  
false. True or false, you haven't handled a  
construction project in Mississippi in over 20 years;  
correct?  
MR. KAHN: Objection. Form.  
THE WITNESS: That's correct.  
Q (By Mr. Snodgrass) Do you have any basis to know  
whether or not insurance companies are forcing the  
policyholders to pay in the State of Mississippi for the  
RCV as required by the terms and conditions of the  
insurance policies?  
MR. KAHN: Objection. Form.  
THE WITNESS: I'm sorry. That question  
doesn't make any sense.  
Q (By Mr. Snodgrass) Do you know whether or not,  
for example, Ms. Mitchell's policy requires State Farm  
to advance funds on her behalf? Or if it requires her  
to advance funds on her behalf for RCV coverage?  
MR. KAHN: Objection. Form. Calls for legal  
conclusion.  
THE WITNESS: That would require me to try to  
interpret her policy and the obligations of State Farm  
under that policy. I'm not here to do that. I'm not  
qualified to render an opinion on the policy  
interpretation.

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if your opinion is true or not?  
MR. KAHN: Object on. Form.  
THE WITNESS: No, I did not.  
Q (By Mr. Snodgrass) Did you survey contractors to  
determine whether or not -- d d you survey Mississippi  
contractors to determine whether or not your opinion is  
relevant to the State of Mississippi in the past 20  
years?  
MR. KAHN: Object on. Form.  
THE WITNESS: No. I d d not conduct a survey.  
I'm simply opining from my 40-year basis of knowledge of  
having worked in 22 states, and what I've routinely seen  
over that time span.  
Q (By Mr. Snodgrass) That's okay. But I'm focusing  
now on Mississippi and what you've done. Did you talk  
to any State Farm employees to find out what they do and  
whether or not this opinion is val d?  
MR. KAHN: Object on. Form.  
THE WITNESS: No. I d d not talk to State  
Farm employees. Rather I drew upon my 40-year  
experience as a general contractor having worked in 22  
states, including Mississippi, to offer an observation  
under Opinion Number 2, which is factual and part of my  
opin on.  
Q (By Mr. Snodgrass) Did you find any published

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1 work or statistical information that would tend to  
2 support your statement in Opinion Number 2?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: No. Because I didn't feel like  
5 I needed to have anything to bolster my 40-year  
6 experience working as a restoration contractor in 22  
7 states, including the State of Mississippi. In order to  
8 render this observation, you see in Opinion Number 2, as  
9 factual and that it is part of my opinion.  
10 Q (By Mr. Snodgrass) Okay. Is there anything other  
11 than your experience that you're relying on for Opinion  
12 Number 2?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: I am relying on all of my  
15 knowledge, experience, and previously acquired in the  
16 business for 40 years, to offer a factual statement  
17 which forms part of my opinion shown on Page 22 at  
18 Opinion Number 2.  
19 Q (By Mr. Snodgrass) Do you know whether or not any  
20 insurance companies refused to pay policyholders for  
21 their work until it's completed in the State of  
22 Mississippi in the past 20 years?  
23 MR. KAHN: Objection. Form.  
24 THE WITNESS: I really am not in a position to  
25 answer what all insurance carriers have done in the

Page 99

1 State of Mississippi from one end of the state to other  
2 over a 20-year period.  
3 Q (By Mr. Snodgrass) So what insurance company are  
4 you comfortable knowing that they always will pay when  
5 the policyholder starts construction work in the State  
6 of Mississippi in the past 20 years?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: I'm not sure I understand your  
9 question.  
10 Q (By Mr. Snodgrass) In other words, do you think  
11 state -- if the policyholder presents a signed contract,  
12 will State Farm 100 percent of the time always advance  
13 funds?  
14 MR. KAHN: Objection. Form. Foundation.  
15 THE WITNESS: Well, there's too many variables  
16 in that for me to answer that question. I guess your  
17 question goes to nationwide over a 40-year time period  
18 and 100 percent. Too many variables. Too many other  
19 factors that would have to be considered to be able to  
20 answer that.  
21 Q (By Mr. Snodgrass) Would you agree with me that  
22 State Farm personnel would be in a much better position  
23 to tell us what State Farm's practices have been in the  
24 State of Mississippi over the past 20 years as it  
25 relates to advancing of costs?

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: I just don't feel like I'm in a  
3 position to even answer that question.  
4 Q (By Mr. Snodgrass) Do you think you have more  
5 information than the State Farm employees that actually  
6 adjust claims and make the decision whether or not to  
7 advance funds?  
8 MR. KAHN: Objection. Form.  
9 THE WITNESS: I'm simply saying here today at  
10 this deposition and in written Opinion Number 2 what my  
11 experience has been, someone who's worked in and around  
12 the industry for 40 years, in 22 states, including  
13 Mississippi. This is what I've observed. This is  
14 factual. This is my opinion.  
15 Q (By Mr. Snodgrass) I understand that. But  
16 unfortunately we know that you haven't spoken to anybody  
17 about this issue from the State of Mississippi. You  
18 haven't worked in the State of Mississippi. You have  
19 never worked for an insurance company. You've never  
20 adjusted a claim. You don't hold any license. So I'm  
21 just wondering, wouldn't it have made sense for State  
22 Farm to have somebody to offer this opinion if it was  
23 truly the case in the State of Mississippi?  
24 MR. KAHN: Objection. Form.  
25 THE WITNESS: I would think that question

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1 would be better put to someone else besides me.  
2 Q (By Mr. Snodgrass) I would think so, because  
3 you've never talked to anybody from State Farm about  
4 this issue, have you?  
5 MR. KAHN: Objection. Form. Asked and  
6 answered.  
7 THE WITNESS: As we've established earlier in  
8 the deposition, I have not talked to State Farm  
9 personnel about these matters.  
10 Q (By Mr. Snodgrass) In fact, you haven't talked to  
11 any insurance personnel in preparation for your opinions  
12 here from any company; correct?  
13 MR. KAHN: Objection. Form. Asked and  
14 answered.  
15 THE WITNESS: Well, as I said, I've been in  
16 the business for 40 years. I've worked alongside  
17 adjusters in and around the insurance adjustment  
18 community as a restoration contractor for 40 years,  
19 working in 22 states, including Mississippi. So of  
20 course, during that time period I've interacted with  
21 policyholders, insurance adjusters. And I am here to  
22 offer testimony today on how the industry works on a  
23 day-to-day basis, industry standards, and common  
24 practices.  
25 Q (By Mr. Snodgrass) I can't remember. Let's go

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1 back because you keep relying on your industry standard.  
2 I think we've established that you d d not -- you  
3 haven't worked out of state for the past three years,  
4 out of the Oklahoma City area; correct?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: Yes.  
7 Q (By Mr. Snodgrass) And when was the last time you  
8 did substantial business outside of the Oklahoma C ty  
9 area?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I think I answered that before.  
12 Somewhere in the last 10 to 15 years.  
13 Q (By Mr. Snodgrass) Okay. So when you talk about  
14 possibly this 40 years of experience, for the last 10 to  
15 15 years, you've been exclusively in the Oklahoma City  
16 area; correct?  
17 MR. KAHN: Objection. Form. Mischaracterizes  
18 testimony.  
19 THE WITNESS: I would say in the last 10 to 15  
20 years I've primarily worked inside the State of  
21 Oklahoma.  
22 Q (By Mr. Snodgrass) In the last 10 to 15 years,  
23 what other states have you worked besides the State of  
24 Oklahoma?  
25 **A My company has done business in the last 10 to 15**

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1 **A What I said is my company has done work in**  
2 **Oklahoma, Texas, Arkansas, Missouri, Louisiana, and**  
3 **there may be others.**  
4 Q Where have you done work in the last 10 to 15  
5 years?  
6 **A What do you mean when you say, you have done work?**  
7 Q I mean, you've worked in the construction world.  
8 **A I'm not often involved in construction work any**  
9 **more, by swinging a hammer if that's what you mean.**  
10 Q No. I mean on-s te though. When was the last  
11 time you were on-site out of state on a project?  
12 MR. KAHN: Object on. Form.  
13 THE WITNESS: I don't know.  
14 Q (By Mr. Snodgrass) Is t, in the last ten years  
15 have you been on-site on a project?  
16 MR. KAHN: Object on. Form.  
17 THE WITNESS: Perhaps.  
18 Q (By Mr. Snodgrass) So have you, yourself, set  
19 foot in the State of Texas in the last 10 to 15 years  
20 for a project?  
21 MR. KAHN: Object on. Form.  
22 THE WITNESS: I have been in Texas on company  
23 business in the last 10 to 15 years. Yes.  
24 Q (By Mr. Snodgrass) Not company business. Have  
25 you been there for a construction project in the last 10

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1 **years in Oklahoma, Texas, Louisiana, Arkansas,**  
2 **Mississippi, Missouri, and there may be others.**  
3 Q Okay. How many projects have you done in Texas?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: I don't know. I've never  
6 counted them.  
7 Q (By Mr. Snodgrass) In the last 10 to 15 years,  
8 how many projects have you done in Texas?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: Again, I've never counted them.  
11 Q (By Mr. Snodgrass) Is it under one?  
12 **A No.**  
13 Q Is it more than one?  
14 **A Yes.**  
15 Q Is it two?  
16 **A I'm not sure. I haven't counted them.**  
17 Q How many projects have you done in Missouri?  
18 MR. KAHN: Objection. Form.  
19 THE WITNESS: I haven't counted those either.  
20 Q (By Mr. Snodgrass) Is it under one?  
21 **A No.**  
22 Q Is it two?  
23 **A I'm not sure. I haven't counted them.**  
24 Q What other state did you claim you've done work in  
25 in the past 10 to 15 years?

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1 to 15 years?  
2 **A Not that I can recall with certainty.**  
3 Q When is the last time you can recall being out of  
4 state on a construction project?  
5 **A I wouldn't be able to give you a specific date.**  
6 Q Is it possible you haven't been out of state on a  
7 construct on project in the last 10 to 15 years?  
8 **A Been on the site myself?**  
9 Q Yes.  
10 **A That might be possible.**  
11 Q Do you consider yourself semi-retired,  
12 Mr. Berryman?  
13 **A No. Not at all.**  
14 Q Is that primarily because you're still doing this  
15 State Farm testifying work?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: Could you restate the question?  
18 Q (By Mr. Snodgrass) Yeah. Is your primary work  
19 now, not your company, but you're own primary work, is  
20 that State Farm?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: Absolutely not.  
23 Q (By Mr. Snodgrass) You're just not on-site on the  
24 ground so-to-speak on any of these construction projects  
25 any more?

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: Most of my role now in the  
3 construction business is on the administration side,  
4 which is office based.  
5 Q (By Mr. Snodgrass) So when you opined in this  
6 case that your company could do the work in Mississippi  
7 for the amount calculated by State Farm, when was the  
8 last time you, yourself, was actually on-site and  
9 creating an estimate?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I have been on-site to create  
12 estimates for construction within the last year.  
13 Q (By Mr. Snodgrass) I understand that. But not  
14 for purposes of testifying for State Farm. I'm  
15 wondering, when was the last time you were on-site in  
16 the State of Mississippi, not related to litigation,  
17 creating an Xactimate estimate?  
18 MR. KAHN: Objection. Form. Asked and  
19 answered.  
20 THE WITNESS: I can't recall a time, as I sit  
21 here.  
22 Q (By Mr. Snodgrass) Do you think you ever created  
23 an Xactimate estimate for a Mississippi project in your  
24 life?  
25 **A I have created estimates concerning damages to**

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1 Q (By Mr. Snodgrass) So you were in Mississippi but  
2 it was for forensic, it was for testifying; correct?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: It was to determine the extent  
5 of damages to a condominium structure.  
6 Q (By Mr. Snodgrass) Right. But it wasn't because  
7 you were making a bid for your company, it was because  
8 you were testifying in a case on behalf of an insurance  
9 company; correct?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I was not there to make a bid  
12 for my construction company.  
13 Q (By Mr. Snodgrass) Okay. When was the last time  
14 you were on-site creating an Xactimate estimate for your  
15 own construction company in the State of Mississippi?  
16 **A I can't recall a time.**  
17 Q So it's fair to state you've never -- for your own  
18 construction company, ever put together a bid in the  
19 State of Mississippi using Xactimate?  
20 MR. KAHN: Objection. Form. Mischaracterizes  
21 testimony.  
22 THE WITNESS: No. I don't think that's  
23 accurate.  
24 Q (By Mr. Snodgrass) Okay. When was the last time  
25 you created a bid in the State of Mississippi for your

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1 **structures in Mississippi. Yes.**  
2 Q When?  
3 **A Within the last 10 to 15 years.**  
4 Q For what?  
5 **A For damages to structures.**  
6 Q Are we talking about Ms. Mitchell's home?  
7 **A No.**  
8 Q You've done it for something else?  
9 **A Yes.**  
10 Q And what was that?  
11 **A One thing that comes to mind is a condominium**  
12 **complex.**  
13 Q Why were you creating an estimate for a  
14 condominium complex?  
15 **A To determine the extent of the damages.**  
16 Q And why were you trying to determine the extent of  
17 the damages?  
18 **A Because that's what I was hired to do.**  
19 Q By who?  
20 MR. KAHN: I'm going to object to the extent  
21 this is a case where you were retained as a consulting  
22 expert and hadn't yet been disclosed. Remind you, you  
23 probably shouldn't disclose it. But go ahead.  
24 THE WITNESS: I can't recall in that case if I  
25 was a testifying expert or a consulting expert.

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1 own construction company to do the work?  
2 **A Probably some time in the last 15 to 20 years.**  
3 Q Well, 20 years ago, at least from your prior  
4 testimony, you weren't using Xactimate; correct?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: As best I can recall, I was  
7 using it 17 years plus ago.  
8 Q (By Mr. Snodgrass) Do you know, and we  
9 established earlier the last time you were in  
10 Mississippi actually doing construction work was 1988,  
11 1998 time frame; correct?  
12 **A I think I said 1998, 1999 approximately.**  
13 Q That was before you ever started using Xactimate  
14 in your life; correct?  
15 MR. KAHN: Objection. Form.  
16 THE WITNESS: Well, I'm not exactly sure  
17 because all I can tell you is that I've been using  
18 Xactimate for 17-plus years. I'm not -- I can't tell  
19 you with certainty if it was 18, 19, 20. I just don't  
20 have -- I don't have the records or the memory to  
21 recall.  
22 Q So if you testified in the past as to -- with more  
23 precision as to when you started using Xactimate, would  
24 that testimony be accurate or your testimony today?  
25 MR. KAHN: Objection. Form.

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1 THE WITNESS: I'm testifying as best I can  
2 with the records and memory that I have. I'm just not  
3 able to determine with any more certainty when I first  
4 started using Xactimate besides to say that it was  
5 17-plus years ago.  
6 Q (By Mr. Snodgrass) It's completely possible  
7 though that you've never created an Xactimate estimate  
8 in the State of Mississippi for your own construction  
9 for a bid; correct?  
10 MR. KAHN: Objection. Form. Mischaracterizes  
11 testimony. Asked and answered.  
12 THE WITNESS: I suppose that's possible. But  
13 I don't think it's probable.  
14 Q (By Mr. Snodgrass) Well, we don't know one way or  
15 the other because if you ever did such an act, you  
16 certainly don't remember it; correct?  
17 MR. KAHN: Objection. Argumentative.  
18 THE WITNESS: As I've already established,  
19 it's not -- it is difficult for me to remember what I  
20 did 19 or 20 years ago.  
21 Q (By Mr. Snodgrass) Let me ask you a couple of  
22 questions based on your contracting experience. If an  
23 insurance company calculates the actual cash value of a  
24 property the day after a loss at \$2,000, but decides  
25 that it only wants to pay \$1,000 because the adjuster

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1 interpret the insurance policy in order to determine the  
2 sufficiency of an actual cash value payment?  
3 MR. KAHN: Objection. Form. Calls for legal  
4 conclusion.  
5 THE WITNESS: I think, as I've outlined on  
6 Page 3 of my report, that is what I believe RCV  
7 depreciation, ACV to be. I feel like that's typically  
8 how those -- as I've expressed on Page 3, that's how  
9 those numbers are arrived at in the industry on a  
10 day-to-day basis.  
11 Q (By Mr. Snodgrass) In your experience can an  
12 insurance company just decide not to pay the full ACV  
13 and kind of wait and see what happens? Is that okay?  
14 MR. KAHN: Objection. Form. Calls for a  
15 legal conclusion.  
16 THE WITNESS: Again, I don't feel like I'm in  
17 a position to opine as to whether that's, quote, okay.  
18 I guess okay would be an interpretation of whether the  
19 policy is being followed, or if legal statutes are being  
20 followed. I'm not in a position to opine as to whether  
21 it would be, quote, okay.  
22 Q (By Mr. Snodgrass) Wasn't that your opinion in  
23 this case that even if State Farm didn't fully pay ACV,  
24 it's okay because certain events might have happened  
25 after the fact, and it made the actual cash value

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1 just doesn't like the policyholder, from your  
2 experience, does anybody owe anybody any money at that  
3 point in time?  
4 MR. KAHN: Objection. Form. Incomplete  
5 hypothetical. Calls for a legal conclusion.  
6 THE WITNESS: I think that requires me to  
7 interpret the policy. And there are a lot of variables  
8 in there from what you've described. So I really don't  
9 feel like I'm in a position to answer that.  
10 Q (By Mr. Snodgrass) In the same question with  
11 respect to the case here, let's assume that the State  
12 Farm adjuster calculates the loss at \$2,000, but simply  
13 decides to pay only \$1,000 because it wants to have a  
14 real expansive view of depreciation. In your insurance  
15 restoration experience, does anybody owe anybody any  
16 money?  
17 MR. KAHN: Objection. Form. Incomplete  
18 hypothetical. Calls for a legal conclusion. You can  
19 answer.  
20 THE WITNESS: Based on your question as you've  
21 posed it, I think there are a lot of variables in there,  
22 and also requires me to interpret the insurance contract  
23 to see what's owed and not owed. And I don't feel  
24 qualified to do that.  
25 Q (By Mr. Snodgrass) Do you think that you need to

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1 payment made okay. Isn't that kind of your opinion in  
2 this case that an insurance company can short an ACV  
3 payment and kind of see how it goes? Isn't that your  
4 opinion in this case?  
5 MR. KAHN: Objection. Form. Mischaracterizes  
6 testimony. But you can answer.  
7 THE WITNESS: No. That's not my opinion.  
8 Q (By Mr. Snodgrass) In fact, you believe the  
9 opposite; an insurance company should make a full ACV  
10 payment as it should properly interpret the contract to  
11 the extent the law requires and make a full ACV payment  
12 right away. That's what you believe; right?  
13 MR. KAHN: Objection. Form. Calls for legal  
14 conclusion. You can answer.  
15 THE WITNESS: I don't think I've offered an  
16 opinion on what I think the insurance company should or  
17 should not do.  
18 Q (By Mr. Snodgrass) Well, you're offering opinions  
19 on the sufficiency of the ACV payment; true?  
20 **A Yes. According to the framework that I've**  
21 **outlined on Page 3, which is what I see using as a**  
22 **customary practice in the industry.**  
23 Q (By Mr. Snodgrass) Well, okay. So if we're going  
24 to render an opinion on sufficiency of the ACV payment,  
25 I don't think you can keep going back and hiding behind

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1 this policy interpretation on issue. The sufficiency of  
2 the ACV payment, should the insurance company make a  
3 sufficient ACV payment after a loss?  
4 MR. KAHN: Objection. Form. Argumentative.  
5 Calls for a legal conclusion. And asked and answered.  
6 THE WITNESS: I've outlined on Page 3 how I  
7 understand ACV, RCV and depreciation. In the  
8 marketplace, as I've seen it routinely used in the  
9 process that I've seen routinely used to calculate those  
10 values, that's the process which I use to make -- to  
11 render the conclusions and opinions that I have in this  
12 report. I'm not here to testify or offer opinions about  
13 what a carrier should and should not do.  
14 MR. SNODGRASS: Okay. Could you please, court  
15 reporter, mark Document C as Exhibit 3 and Document D as  
16 Exhibit 4.  
17 (Exhibits Nos. 3 and 4 were marked for  
18 identification purposes)  
19 MR. KAHN: While she's doing that, Joe, can we  
20 take a two-minute break?  
21 MR. SNODGRASS: Sure. Let's keep it short  
22 though.  
23 (A brief break was had; after which the  
24 following proceedings took place:)  
25 Q (By Mr. Snodgrass) Let's keep dealing with the

Page 116

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 Q (By Mr. Snodgrass) Let me ask you this, when  
16 people buy an ACV only policy, in your experience, do  
17 they have the expectation that after the loss they'll  
18 have enough money to be able to fix their roof?  
19 MR. KAHN: Objection. Form. Foundation.  
20 THE WITNESS: It's hard for me to say what --  
21 I cannot say what, in some general statement, what  
22 policyholders across all points in space and time would  
23 expect.  
24 Q (By Mr. Snodgrass) What should somebody with an  
25 actual cash value policy line up with? Should it be an

Page 115

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
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20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

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1 amount sufficient to fix their roof or not?  
2 MR. KAHN: Objection. Form. Calls for legal  
3 conclusion.  
4 THE WITNESS: I think I'd have to see the  
5 policy and try to interpret it in order to give you an  
6 answer.  
7 Q (By Mr. Snodgrass) And in this case, should the  
8 policy of insurance at issue in this case, should it  
9 provide enough money for Ms. Mitchell to be able to fix  
10 her home to the point where it was immediately before  
11 the loss based on the ACV policy provisions?  
12 MR. KAHN: Objection. Form. Calls for legal  
13 conclusion.  
14 THE WITNESS: Yes. I think that requires me  
15 to interpret the policy, which I don't feel like I'm  
16 qualified to do.  
17 Q (By Mr. Snodgrass) Well, wouldn't that  
18 interpretation be key in determining how broad you apply  
19 depreciation? Because if for example the Court in this  
20 case holds that ACV should be enough to put Ms. Mitchell  
21 back in the place she was immediately before the loss,  
22 if that's what the Court holds, won't we then have to  
23 say, okay, if that's what we're going to do, we're going  
24 to have to interpret depreciation to allow that to  
25 happen?




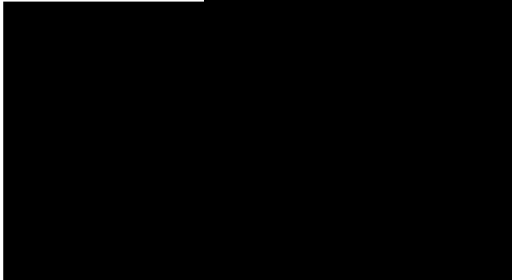
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1 MR. KAHN: Objection. Form. Calls for legal  
2 conclusion.

3 THE WITNESS: I just don't think I'm in a  
4 position to give you an opinion on that.

5 Q (By Mr. Snodgrass) Okay. That's fair. As it  
6 relates to Number 3, 

7 

16 Q (By Mr. Snodgrass) And, in fact, you know from  
17 your limited experience with Xactimate, that Xactimate  
18 can be used to quickly and easily separate depreciation  
19 of labor and materials versus depreciation of materials  
20 only; correct?

21 MR. KAHN: Objection. Form.

22 THE WITNESS: I have not used that function to  
23 separate the depreciation of material from nonmaterial.  
24 So I'm not in a position to opine, as I sit here, about  
25 how easy that is to do.

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1 Q (By Mr. Snodgrass) So if someone says this is  
2 really easy to do it, you're not in a position to  
3 challenge that; right?

4 MR. KAHN: Objection. Form. Incomplete  
5 hypothetical.

6 THE WITNESS: And by that, do you mean easy to  
7 do on a single loss?

8 Q (By Mr. Snodgrass) I mean on the Xactimate  
9 computer software program.

10 MR. KAHN: Same objection.

11 THE WITNESS: By that, do you mean on a  
12 calculation of a single loss?

13 Q (By Mr. Snodgrass) I don't know what you mean by  
14 calculation of a single loss?

15 **A Like a single loss like Ms. Mitchell's.**

16 Q As compared to what? What's a double loss?

17 **A As opposed to hundreds or tens or scores or**  
18 **hundreds or thousands of losses?**

19 Q I'm taking it one at a time. Is it really easy,  
20 first of all, to do an Xactimate?

21 MR. KAHN: Objection. Form.

22 THE WITNESS: Well, I'm trying to answer your  
23 question. I'm asking you to narrow it down. Are you  
24 talking about on a single loss? Or are you talking  
25 about on thousands of losses?

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1 Q (By Mr. Snodgrass) Have you ever used Xactimate  
2 to estimate thousands of losses at one time?

3 **A No.**

4 Q When you use Xactimate, is it always to analyze a  
5 single loss?

6 **A I usually do analyze them one at a time.**

7 Q You do?

8 **A Usually, yes.**

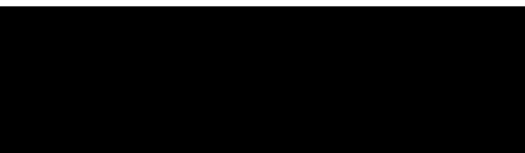
9 Q Okay. So that's what I'm talking about, usually.  
10 Is it usually easy to separate out labor and materials  
11 in Xactimate?

12 MR. KAHN: Objection. Form.

13 THE WITNESS: Are you talking about on a  
14 single loss or on hundreds?

15 Q (By Mr. Snodgrass) Yeah. Let's start with a  
16 single loss.

17 **A On a single loss, I don't think it would be that**  
18 **difficult to do.**

19 

24 Q Okay. In coming up with this conclusion, did you  
25 speak with any active Mississippi contractor?

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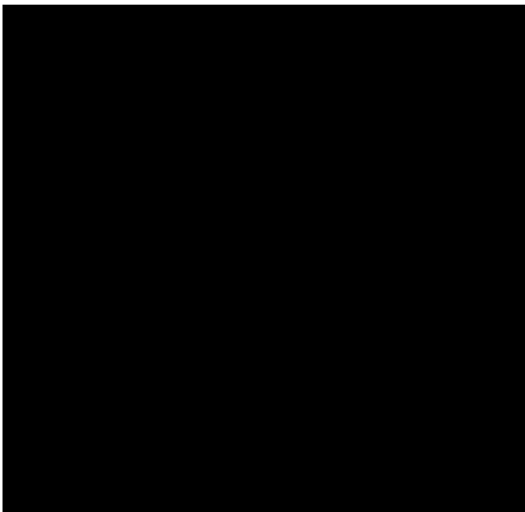
1 **A No.**

2 Q Okay. Was this just based exclusively on your own  
3 use of Xactimate?

4 **A No. It's based on my use of Xactimate, my**  
5 **understanding about the industry, as well as claim file**  
6 **information in there about bid proposals and actual**  
7 **costs or actual proposals to do the work, et cetera.**

8 Q Did you talk with any contractors then?

9 **A No.**

10 



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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 Q Did Ms. Mitchell's ACV change over time?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: By that, do you mean the  
18 estimated ACV?  
19 Q (By Mr. Snodgrass) Just whatever you call ACV,  
20 did that ever change over time for Ms. Mitchell?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: The estimated ACV in this  
23 matter, as was ever expressed by any party, has remained  
24 the same as far as I understand it.  
25 Q (By Mr. Snodgrass) Did you change the price list

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1 changing your testimony? Does ACV change over time?  
2 MR. KAHN: Objection. Form. Argumentative.  
3 THE WITNESS: I have said in my report and  
4 during this deposition that estimated ACV can change  
5 over time.  
6 Q (By Mr. Snodgrass) Okay. So wouldn't, in order  
7 to know how much Ms. Mitchell is owed for ACV, we have  
8 to run the numbers again today?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: I feel comfortable in examining  
11 the estimated RCV and ACV in real time, at the time that  
12 it was done in the typical process of processing the  
13 claim.  
14 Q (By Mr. Snodgrass) Well, I'm confused. I thought  
15 you said ACV could change over time. So can you explain  
16 to me why we shouldn't use the ACV calculated as of  
17 today's date as the amount owed to Ms. Mitchell?  
18 MR. KAHN: Objection. Form. Calls for a  
19 legal conclusion.  
20 THE WITNESS: Estimated ACV and estimated RCV  
21 can change over time. But in this matter, I don't see  
22 any -- I don't see any reason why it would need to be  
23 recalculated since I've run the numbers, examined it on  
24 how it was calculated initially. It appears to me to be  
25 sufficient at the time.

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1 of Xactimate to determine whether or not the ACV was  
2 still the same?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: Well, if you were to ask what is  
5 the present replacement cost value and estimated ACV  
6 today, is it different from what it was shortly after  
7 the loss occurred, at the time State Farm looked at it?  
8 There could be some changes. I did not assess that.  
9 Q (By Mr. Snodgrass) Okay. So if you  
10 Ms. Mitchell's ACV went up since the date of loss, is  
11 she entitled to that sum of money from State Farm?  
12 MR. KAHN: Objection. Form. Calls for a  
13 legal conclusion. Incomplete hypothetical.  
14 THE WITNESS: I really cannot give you an  
15 opinion on what should be done by a carrier or should be  
16 done by a policyholder under this insurance contract.  
17 Q (By Mr. Snodgrass) Well, shouldn't ACV as you  
18 define it on Page 3, should that be calculated now or  
19 should it be calculated based on the date of the loss?  
20 MR. KAHN: Objection. Form. Calls for a  
21 legal conclusion.  
22 THE WITNESS: Well, I can tell you what's  
23 customary in the industry, and that it's calculated at  
24 the time of the loss.  
25 Q (By Mr. Snodgrass) Okay. So does it? Are you

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1 Q (By Mr. Snodgrass) So but you didn't run the  
2 numbers today; right? You didn't run it based on a  
3 price list for today; correct?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: What I did was analyze what --  
6 what occurred when it occurred to see if at that time I  
7 felt like the estimated RCV and the estimated ACV were  
8 sufficient.  
9 Q (By Mr. Snodgrass) Right. And I'm trying to get  
10 to the point, why didn't you use the price list as of  
11 the date of your inspection? Because if ACV can change  
12 over time, as you've testified, why aren't we using the  
13 changed number?  
14 MR. KAHN: Objection. Form. Calls for legal  
15 conclusion.  
16 THE WITNESS: I wasn't trying to determine if  
17 ACV had changed over time. I was trying to determine if  
18 the RCV and estimated ACV that was created by State Farm  
19 during the typical timing and typical process, whether  
20 that in and of itself was sufficient.  
21 Q (By Mr. Snodgrass) So you're not -- so the ACV  
22 might be different today. You don't dispute that;  
23 right?  
24 MR. KAHN: Objection. Form.  
25 THE WITNESS: If a person was to recalculate

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1 the RCV today, the estimated ACV today, it might be  
2 different.  
3 Q (By Mr. Snodgrass) And if that results in a  
4 higher potential payment to Ms. Mitchell, that would be  
5 the amount that she would be owed under their ACV  
6 covering; correct?  
7 MR. KAHN: Objection. Form. Incomplete  
8 hypothetical. Calls for a legal conclusion.  
9 THE WITNESS: I'm not in a position to opine  
10 about what she's owed or not owed.  
11 Q (By Mr. Snodgrass) But I'm just having a hard  
12 time understanding. If you've testified already, you  
13 have, that ACV can change over time, if her ACV is  
14 higher today than it was on the date of the loss, why  
15 wouldn't she be entitled to that payment?  
16 MR. KAHN: Objection. Form. Incomplete  
17 hypothetical. Calls for a legal conclusion.  
18 THE WITNESS: As I said before, I am not here  
19 to opine about what she's entitled to or what State  
20 Farm's obligations or her obligations may be under the  
21 insurance contract.  
22 Q (By Mr. Snodgrass) But you have because you've  
23 testified that ACV changes over time, to calculate her  
24 true ACV today, you would have to run her ACV with the  
25 current price list; correct?

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1 the damages that are unmitigated have gotten any worse.  
2 Q (By Mr. Snodgrass) That's fine. Regardless of  
3 whether they got worse or not, we are going to need to  
4 use that new price list; right?  
5 MR. KAHN: Object on. Form. Incomplete  
6 hypothetical.  
7 THE WITNESS: You would probably need to run  
8 it with a new price list, which may have some figures  
9 that are higher, some are going to be lower.  
10 Q (By Mr. Snodgrass) So it may result in a  
11 supplemental payment to Ms. Mitchell; right?  
12 MR. KAHN: Objection. Form. Incomplete  
13 hypothetical. Calls for legal conclusion.  
14 THE WITNESS: I don't know if it would  
15 generate a supplemental payment. Because again, that's  
16 interpretation of the policy and what's owed under the  
17 policy.  
18 Q (By Mr. Snodgrass) Well, again, I don't want you  
19 to interpret the policy. But under your interpretation  
20 that ACV changes over time, and I think you've testified  
21 several times now that you need to use the current price  
22 list of June of 2018, if that results in a higher ACV  
23 calculation, that's what the ACV calculation would be;  
24 right?  
25 MR. KAHN: Object on. Form. Incomplete

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1 MR. KAHN: Objection. Form. Incomplete  
2 hypothetical.  
3 THE WITNESS: If a person was going to  
4 endeavor to do that, that's one of the things that would  
5 have to be done. Yes.  
6 Q (By Mr. Snodgrass) Okay. And specifically on  
7 Page 3, the formula that you have on Page 3 as you  
8 understand it, in order to recalculate Ms. Mitchell's  
9 ACV, we need to use the current price list to calculate  
10 the ACV; correct?  
11 MR. KAHN: Objection. Form. Mischaracterizes  
12 testimony.  
13 THE WITNESS: That's one of the things that we  
14 would need to do. There's probably a lot of things that  
15 would need to be done. A person would probably have to  
16 make another site inspection to make sure to see what  
17 work perhaps she's done in the last few months that was  
18 not done when I was last there.  
19 Q (By Mr. Snodgrass) And if she put -- even if she  
20 didn't do any work, even if it's just the same as it  
21 was, we know we need to keep running that price list  
22 because ACV, as you've said, changes over time; right?  
23 MR. KAHN: Objection. Form. Incomplete  
24 hypothetical.  
25 THE WITNESS: I would probably want to see if

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1 hypothetical. Calls for legal conclusion. And asked  
2 and answered.  
3 THE WITNESS: Well, if a person was going to  
4 try to reassess the current estimated RCV and current  
5 estimated ACV, there would be several steps involved to  
6 do that properly. And many of those would be the same  
7 steps that I took in the Mitchell matter so far. I  
8 personally would want to go make another site visit to  
9 see what condition the property's in now. Is it more  
10 damage than it was before. Determine whether she has  
11 done any work at all. What was the cost of that work.  
12 What was the necessary and reasonable cost of that  
13 component. And take into account a variety of factors  
14 as I have in the Mitchell matter so far, in order to  
15 determine what -- to what extent, if any, the estimated  
16 RCV and estimated ACV might change.  
17 Q (By Mr. Snodgrass) So how long should State Farm  
18 do the process that you recommend where somebody like  
19 you goes out and reassess the loss and recalculates RCV  
20 and ACV for Ms. -- assuming that she doesn't do anything  
21 with the property, how often should State Farm follow up  
22 and keep re-estimating RCV and ACV? Should that be done  
23 every three months? Every 120 days? What do you think  
24 the time period is for that?  
25 MR. KAHN: Objection. Form. Incomplete

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1 hypothetical. Calls for a legal conclus on.

2 THE WITNESS: I don't feel like I'm in a

3 position to answer that.

4 Q (By Mr. Snodgrass) I don't want your position. I

5 just want your experience. So in your experience when

6 somebody doesn't repair their loss and then would the

7 insurance company go out every, what, 90 days, every 180

8 days to reassess and recalculate RCV and ACV?

9 MR. KAHN: Object on.

10 Q (By Mr. Snodgrass) How long -- what's your

11 experience on that, Mr. Berryman?

12 MR. KAHN: Object on. Form. Incomplete

13 hypothetical.

14 THE WITNESS: Well, it's been my experience

15 that once an insurance company estimates the estimated

16 RCV and estimated ACV, the policyholder usually goes to

17 work on their restoring their home or business. If they

18 continue to wait and do nothing, let the damages get

19 worse, it's been my experience that insurance companies

20 do not come in to estimate the increasing damages or the

21 changes in cost structure over time because a

22 pol cyholder has done nothing to restore their property.

23 Q (By Mr. Snodgrass) Okay. Well, let's just say

24 that the property doesn't get any worse, but the

25 pol cyholder just wants more ACV because of changing

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1 as you move forward w th the restoration process. I

2 have not seen people purposefully just let time get on

3 the clock so that they can call to have their ACV

4 reevaluated.

5 Q (By Mr. Snodgrass) You haven't seen that, huh?

6 **A Like I said before, most people move forward to**

7 **restore their property.**

8 Q I'm just trying to figure t out. It seems to me

9 that if ACV truly changed over time, a lot of people

10 would be calling the insurance company, come back and

11 reevaluate losses over time, wouldn't they?

12 MR. KAHN: Object on. Form. Incomplete

13 hypothetical. Calls for legal conclus on.

14 THE WITNESS: That's -- that's not -- that

15 doesn't comport with my experience. That's not how

16 things happen out there in the real world.

17 Q (By Mr. Snodgrass) And that's what I'm wondering.

18 Maybe your defin tion doesn't fit the real word.

19 Because if you've never seen a policyholder call up an

20 insurance company and say, hey, ACV changes over time.

21 Come reassess my loss. Maybe that means ACV really

22 doesn't change over time. Is that possible?

23 MR. KAHN: Object on. Form. Calls for legal

24 conclus on.

25 THE WITNESS: Sometimes the estimated RCV

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1 circumstances. Can the policyholder -- in your

2 experience, does the policyholder call the insurance

3 company up and say, hey, can you come relook at my

4 property and see if I'm entitled to more ACV because,

5 you know, ACV changes over time?

6 MR. KAHN: Objection. Form. Incomplete

7 hypothetical. Calls for legal conclusion.

8 THE WITNESS: Based on my experience, I have

9 not seen that.

10 Q (By Mr. Snodgrass) But that's certainly possible,

11 because as we know, ACV changes over time. So if I have

12 cosmetic damage to my home, I can wait until the market

13 price is right and call the insurance company back and

14 say, hey, can you please readjust my ACV? That's

15 allowable. That doesn't happen?

16 MR. KAHN: Objection. Form. Incomplete

17 hypothetical. Calls for a legal conclusion.

18 THE WITNESS: I don't know if that's allowable

19 in the pol cy or not.

20 Q (By Mr. Snodgrass) Well, hasn't it been your

21 experience that ACV can change over time?

22 MR. KAHN: Objection. Form. Asked and

23 answered.

24 THE WITNESS: It can change because, as I

25 described earlier, oftentimes the scope of work changes

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1 changes, sometimes the estimated ACV changes. It

2 doesn't necessarily change by virtue of time alone. And

3 it's -- I have never encountered someone who wa ted at

4 home for extended per ods of time hoping that time would

5 change their estimated RCV.

6 Q (By Mr. Snodgrass) Or estimated ACV?

7 **A Either the estimated RCV or the estimated ACV.**

8 Q All right. Let's sw tch to Exhibit No. 3.

9 Exhibit 3 should be a screenshot?

10 **A Yes.**

11 Q Okay. You recognize what this screenshot comes

12 from?

13 **A Yes.**

14 Q Where does this come from?

15 **A It appears to be a screenshot from the Xactimate**

16 **software program.**

17 Q You see the site that says depreciation opt ons?

18 **A Yes.**

19 Q D d you see the reflection of the item called

20 depreciated removal?

21 **A Yes.**

22 Q And do you typically toggle depreciate removal on

23 or off?

24 MR. KAHN: Objection. Form.

25 THE WITNESS: I don't typ cally toggle t

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1 either way.  
2 Q (By Mr. Snodgrass) Well, it has to be one or the  
3 other when you do an estimate, doesn't it?  
4 **A When I typically provide estimates, they are RCV**  
5 **estimates.**  
6 Q Okay. How often have you been called upon to  
7 calculate and make an ACV estimate?  
8 **A I would just say on occasion.**  
9 Q Okay. How many times in your career have you been  
10 called upon to calculate actual cash value?  
11 **A I wouldn't be able to tell you how many times in**  
12 **40 years.**  
13 Q Once? Twice?  
14 **A Perhaps in a 40-year period, 40 times.**  
15 Q Okay. And as it relates to Ms. Mitchell's loss,  
16 did you try to calculate her actual cash value?  
17 **A No. I didn't.**  
18 Q Well, when you testified that you think the actual  
19 cash value payment was sufficient, you don't know what  
20 that was based on? Specifically, you don't know what  
21 depreciation option, if any, was used by State Farm to  
22 calculate her actual cash value; correct?  
23 MR. KAHN: Object on. Form.  
24 THE WITNESS: No. That's false. I mean, by  
25 looking at the claim file documents, I can make a

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1 Q (By Mr. Snodgrass) Why d d you -- so you opine  
2 that labor should be depreciated in this case, but I  
3 take it you have a more subtle opinion now, only  
4 installat on labor should be depreciated but not removal  
5 labor; correct?  
6 MR. KAHN: Objection. Form.  
7 THE WITNESS: Not depreciating removal  
8 comports w th my earlier testimony that labor and  
9 material are not -- material and nonmaterial tems  
10 should be depreciated because they are part of a  
11 constructed system. I gave an example of a roof system.  
12 When you remove -- when you remove roof shingles, you're  
13 not constructing a system. You're removing something.  
14 It's -- it's not constructing a system. It's labor  
15 only. So that -- that squares w th the opinion I gave  
16 you before.  
17 Q (By Mr. Snodgrass) So to the extent State Farm  
18 depreciated removal, you're certainly not opining that  
19 that was acceptable?  
20 MR. KAHN: Objection. Form. Calls for legal  
21 conclusion.  
22 THE WITNESS: I do not know what State Farm's  
23 obligations are under the insurance contract.  
24 Q (By Mr. Snodgrass) Well, right. You don't know  
25 what State Farm's obligations are to depreciate

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1 determination as to what material items and nonmaterial  
2 items were depreciated. And I am able to draw some  
3 observations and conclusions from looking at those  
4 documents.  
5 Q All right. Well, let me ask you, which  
6 depreciation option items should be checked in your  
7 definition of ACV in the Xactimate program?  
8 MR. KAHN: Objection. Form.  
9 THE WITNESS: What I see routinely selected  
10 and depreciated are depreciate material, depreciate  
11 nonmaterial, depreciate overhead and profit, depreciate  
12 sales tax.  
13 Q (By Mr. Snodgrass) All right. So what about the  
14 depreciate removal?  
15 **A That, most of the time, is not depreciated.**  
16 Q Is that industry custom and practice that removal  
17 should not be depreciated?  
18 **A That's what I routinely see.**  
19 Q And why shouldn't removal labor be depreciated?  
20 MR. KAHN: Objection. Form. Calls for legal  
21 conclusion.  
22 THE WITNESS: I do not know the reasoning  
23 behind what -- what reasoning carriers use when they  
24 decide not to depreciate labor. I'm sorry. When they  
25 decide not to depreciate removal.

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1 nonmaterials or not under the insurance contract.  
2 I'm asking you, you've come here and you've  
3 given your opinions, as I understand it, aren't really  
4 related to the insurance policy; correct?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: That's too broad -- that's too  
7 broad of a question.  
8 Q (By Mr. Snodgrass) You didn't look at the  
9 insurance policy to try to analyze whether nonmaterial  
10 should be depreciated or not; correct?  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: I did not try to interpret the  
13 policy as to what State Farm's contractual obligations  
14 are concerning depreciating nonmaterial.  
15 Q (By Mr. Snodgrass) And similarly you didn't look  
16 at the insurance policy to determine whether or not  
17 State Farm should be depreciating removal?  
18 MR. KAHN: Objection. Form.  
19 THE WITNESS: I did not -- again, did not  
20 attempt to interpret the State Farm insurance contract  
21 and State Farm's obligations.  
22 Q (By Mr. Snodgrass) So let me ask you this, why is  
23 removal labor not depreciated but installation labor  
24 depreciated? Why is that fine distinction being made by  
25 you?

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1 MR. KAHN: Objection. Form. Asked and  
2 answered.  
3 THE WITNESS: Yes. As I've said before, the  
4 construction of a roof system, for instance, is a  
5 combination of labor and material, deliberately and  
6 carefully, specifically put into place to create a  
7 system, which has an intended purpose. Without the  
8 combination of those two carefully brought together, no  
9 such system arises. And so they are inseparable. They  
10 are together. It takes both to create the insured  
11 system or item. The item for which a policyholder  
12 expects performance.  
13 Q (By Mr. Snodgrass) That's fine. But we were  
14 talking about removal. Why is removal not depreciated?  
15 **A I think you already asked me that.**  
16 MR. KAHN: Objection. Form.  
17 Q (By Mr. Snodgrass) I didn't hear it. You talked  
18 to me a lot about inseparable stuff. But I'm trying to  
19 figure out why isn't removal being depreciated in your  
20 opinion?  
21 MR. KAHN: Objection. Form. Asked and  
22 answered.  
23 THE WITNESS: As I said before, labor removal  
24 is to remove shingles for instance. It isn't to  
25 construct a system that sheds water, or a system for

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1 document by your attorney? Or did you get shown this  
2 document as part of your Mississippi experience?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: I saw this as part of the  
5 documents that I reviewed and attached to one pleading  
6 or another, as I recall.  
7 Q (By Mr. Snodgrass) So have you experienced --  
8 have you experienced this document and this policy in  
9 your insurance restoration practices for the State of  
10 Mississippi at all?  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: No. I haven't.  
13 Q (By Mr. Snodgrass) In looking at the case, did  
14 you look to see whether or not the insurer in this case  
15 clearly provided for the depreciation of labor in the  
16 insurance policy?  
17 MR. KAHN: Objection. Form.  
18 THE WITNESS: No, I did not.  
19 Q (By Mr. Snodgrass) Did you talk to anybody about  
20 the Mississippi Insurance Department's bulletin?  
21 MR. KAHN: Objection. Form. To the extent  
22 this is seeking communications with counsel, I'm going  
23 to instruct you not to answer.  
24 If you talked to anybody other than counsel,  
25 you can answer.

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1 which a home owner, for instance, expects performance  
2 from a system made of labor and material. Tearing off  
3 is just -- tearing off shingles, t doesn't create  
4 anything.  
5 Q (By Mr. Snodgrass) D d you see anything in the  
6 insurance policy that talked about depreciating removal  
7 versus depreciating installation labor?  
8 MR. KAHN: Objection. Form. Calls for legal  
9 conclus on.  
10 THE WITNESS: I did not read the State Farm  
11 insurance policy in order to determine what's covered,  
12 what's not covered, and what's to be depreciated and  
13 what's not because that requires me to start to form  
14 legal opinions about what the contract says and does not  
15 say. Rather, I'm here to talk about what I've seen in  
16 my 40 years of experiences, common pract ces, and  
17 industry standards.  
18 Q (By Mr. Snodgrass) Yeah. Can we see -- can you  
19 take a look at Exhibit No. 4, please. Now, certainly in  
20 your vast Mississippi insurance experience and  
21 understanding, you've come across this document before;  
22 right?  
23 MR. KAHN: Objection. Form. Argumentative.  
24 THE WITNESS: I have seen this before.  
25 Q (By Mr. Snodgrass) D d you get shown this

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1 THE WITNESS: No. No one else other than  
2 counsel.  
3 Q (By Mr. Snodgrass) Did you ever see State Farm  
4 follow the format suggested in the last sentence of the  
5 second paragraph where, if material or labor is  
6 depreciated, the insurer should clearly set out those  
7 amounts in the claim estimate? Did you see any proof  
8 that State Farm ever set out the amount of the labor  
9 depreciation?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I did not look into that. That  
12 was --  
13 Q (By Mr. Snodgrass) Did you see that in  
14 Ms. Mitchell's claim when you reviewed her estimate?  
15 Did you see State Farm clearly setting forth and  
16 communicating to her the amount of labor depreciation  
17 withheld?  
18 MR. KAHN: Objection. Form.  
19 THE WITNESS: That was not part of my inquiry.  
20 Q (By Mr. Snodgrass) That was -- I don't -- you did  
21 look at the estimate Ms. Mitchell was provided by State  
22 Farm; right?  
23 **A That was not part of my inquiry.**  
24 Q That wasn't my question. You did look at the  
25 estimate Ms. Mitchell was provided by State Farm;

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1 correct?

2 **A Yes.**

3 Q Did you see the labor depreciation clearly set

4 forth on that estimate?

5 MR. KAHN: Objection. Form.

6 THE WITNESS: That was not part of my inquiry.

7 Q (By Mr. Snodgrass) That doesn't matter, sir. Did

8 you see it or not? You have to answer. You can't just

9 say I don't want to answer.

10 MR. KAHN: Objection. Form. And he's told

11 you what his answer was. You've asked him the question,

12 he's given you an answer.

13 MR. SNODGRASS: That's not an answer. That's

14 non-responsive and I move to strike.

15 Q (By Mr. Snodgrass) Did you see that, sir? Yes or

16 no.

17 MR. KAHN: Objection. Form. Asked and

18 answered.

19 THE WITNESS: It's not something that I looked

20 for.

21 Q (By Mr. Snodgrass) Did you see it?

22 MR. KAHN: Objection. Form. Asked and

23 answered.

24 If you have anything further to say, you can

25 say t.

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1 the amount of labor depreciat on for any State Farm

2 policyholder ever?

3 MR. KAHN: Objection. Form.

4 THE WITNESS: No.

5 MR. SNODGRASS: Court reporter, can you please

6 mark F as the next exhibit. And tell me what number it

7 is.

8 THE COURT REPORTER: We are on No. 5.

9 (Exhib t No. 5 was marked for dentification

10 purposes)

11 Q (By Mr. Snodgrass) Sir, you've seen this document

12 before, I assume?

13 **A Yes.**

14 Q I'll talk with you about this. First off, do you

15 know Mr. Johnson?

16 **A No, I don't.**

17 Q Okay. D d you see that Mr. Johnson made some

18 opin ons in Paragraphs 12 to 21 about Xactimate

19 software?

20 MR. KAHN: Objection. Form.

21 THE WITNESS: I do see starting at his Page 4

22 through Page 6, items 12 through 21.

23 Q (By Mr. Snodgrass) And you see that Mr. Johnson,

24 at least in his CV, did you see that he is an Xactimate

25 certified user level three?

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1 THE WITNESS: I feel like I've answered that

2 question.

3 Q (By Mr. Snodgrass) No. No, you haven't, sir. If

4 you saw it, you have to tell me. You're under oath.

5 You have to say the truth, the whole truth, and nothing

6 but the truth. Do you remember taking that oath at the

7 beginning of the deposition?

8 MR. KAHN: Joe, he's given you an answer to

9 the question.

10 MR. SNODGRASS: No. No.

11 MR. KAHN: If you're going to keep being

12 argumentative and abusive, we can put this off.

13 Q (By Mr. Snodgrass) Did you see it, sir? Just yes

14 or no.

15 MR. KAHN: Objection. Asked and answered.

16 THE WITNESS: I said it wasn't part of my

17 inquiry. I did not look for it. So I don't know

18 whether it's on there or not.

19 Q (By Mr. Snodgrass) That was the answer I was

20 looking for. Did you not see it because you weren't

21 carefully looking at the estimate?

22 MR. KAHN: Objection. Form. Argumentative.

23 Asked and answered.

24 THE WITNESS: I'm not sure why.

25 Q (By Mr. Snodgrass) Did you ever try to calculate

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1 **A No. I didn't see that.**

2 Q Okay. Do you dispute any of the statements in

3 Paragraphs 12 to 21, as it relates to the Xactimate

4 estimating software in Mr. Johnson's report?

5 MR. KAHN: Take as much time as you need.

6 (Witness examines document)

7 Q (By Mr. Snodgrass) Let's take it one paragraph at

8 a time, if we could, Mr. Berryman?

9 **A Hold on. I'm almost finished.**

10 Q Okay.

11 **A Okay. I'm finished.**

12 Q Okay. The question was whether or not you

13 disputed anything in Paragraphs 12 to 21?

14 MR. KAHN: Objection. Form.

15 THE WITNESS: Well, I have a little bit of

16 issue with one of the things that's said in 18, and also

17 20.

18 Q (By Mr. Snodgrass) What is your issue with --

19 well, first off, so I take t 12 through 17 you don't

20 dispute?

21 **A They seem to be -- they seem to be accurate.**

22 Q 18? You sa d you question or have a concern. I

23 couldn't hear what you said. What's the problem with

24 18?

25 **A Well, at the very last sentence he says, in other**



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1 **words, depreciation of building materials can easily be**  
2 **calculated within the software without concurrently**  
3 **applying the same percentage values and future labor**  
4 **costs. And that might be wholly or almost wholly true**  
5 **when you talk about versions of Xactimate that exist**  
6 **today. But I'm not so sure that's accurate when you**  
7 **talk about versions of Xactimate that have been**  
8 **available in years past, in recent years past.**

9 Q (By Mr. Snodgrass) Well, Mr. Johnson -- well  
10 first off, you understand there's a class per od there;  
11 right?

12 **A Yes.**

13 Q Okay. And so we are only talking about 2014 to  
14 the present?

15 MR. KAHN: Objection. Form.

16 THE WITNESS: That, I don't know.

17 Q (By Mr. Snodgrass) Did you remember reading  
18 Paragraph 2 where we're talking about a time frame with  
19 a date of June 23rd, 2014?

20 **A Which Paragraph 2?**

21 Q Paragraph 2 of Mr. Johnson's report.

22 **A Yes. I see that.**

23 Q Okay. So first off, I assume that every vers on  
24 of Xactimate since 2014 has allowed the depreciat on  
25 opt ons that we discussed earlier; correct?

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1 report. And we know that because your report refers to  
2 his report; correct?

3 **A Well, I think his report was issued maybe two**  
4 **weeks before mine, plus or minus.**

5 Q Right. So to the extent you wanted to, you had a  
6 full and fair opportunity to determine whether or not  
7 Paragraph 18 was 100 percent accurate or not; correct?

8 MR. KAHN: Objection. Form.

9 THE WITNESS: I suppose I could have.

10 Q (By Mr. Snodgrass) Okay. What other problems or  
11 issues do you have with Paragraphs 12 to 21?

12 **A At the end of 20, he says others such as State**  
13 **Farm require their adjuster to depreciate labor. And I**  
14 **don't know if that's a requirement or not. So I don't**  
15 **know -- I don't know if that's accurate or not.**

16 Q Anything else in Paragraphs 12 to 21?

17 **A I think that's it.**

18 Q Okay. Now, in the next sect on of his report,  
19 Mr. Johnson talks about claims management software that  
20 he used. First off, have you ever used in your life  
21 claims management software?

22 MR. KAHN: Objection. Form.

23 THE WITNESS: I have not operated it. I have  
24 looked at reports that have been generated by it.

25 Q (By Mr. Snodgrass) When you say you looked at

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1 **A I don't know that that's accurate.**

2 Q You don't know one way or the other?

3 **A Not as I sit here. It's something I would have to**  
4 **investigate. It may, as he says in 18, that may be a**  
5 **true statement for available Xactimate platforms today.**  
6 **But I'm not sure that would be a true statement**  
7 **extending back to systems that might have been in use in**  
8 **late '14, '15 and '16. I would just have to investigate**  
9 **it to know.**

10 Q So you're not disputing t, you're just saying you  
11 would need to investigate it?

12 **A Yes. I don't know that it's accurate. That's**  
13 **what I'm saying.**

14 Q But t might be completely accurate on the other  
15 hand; correct?

16 MR. KAHN: Object on. Form. Asked and  
17 answered.

18 THE WITNESS: As I said, I don't know if it's  
19 accurate or not.

20 Q (By Mr. Snodgrass) Okay. And certainly you have  
21 this opin on pr or to you issuing your opin on; correct?

22 **A Which opinion as to whether what he says is**  
23 **accurate or not?**

24 Q Well, I'm just trying to establish the simple  
25 propos tion that his report was issued long before your

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1 reports generated by it, are you talking about printed  
2 documents?

3 **A Yes. Printed and electronic documents that are**  
4 **claims management software printouts.**

5 Q Okay. But you've never actually used or  
6 interfaced with claims management software?

7 MR. KAHN: Objection. Form.

8 THE WITNESS: I have not entered data, but I  
9 have seen reports from claims management software.

10 Q (By Mr. Snodgrass) You consider yourself to have  
11 an expertise in claims management software?

12 MR. KAHN: Objection. Form.

13 THE WITNESS: No. Not beyond being able to  
14 read it for what it says.

15 Q (By Mr. Snodgrass) Okay. Are you familiar w th  
16 any types of claims management software?

17 **A Not by name. No.**

18 Q Have you ever had claims management software on  
19 any computer that you've owned?

20 **A Objection. Form.**

21 **THE WITNESS: No.**

22 Q (By Mr. Snodgrass) Have you ever had claims  
23 management software on any telephone that you've ever  
24 owned? When I say phone, I mean cell phone.

25 MR. KAHN: Objection. Form.

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1 THE WITNESS: No.

2 Q (By Mr. Snodgrass) Have you ever had any training

3 as it relates to the use of claims management software?

4 MR. KAHN: Objection. Form.

5 THE WITNESS: No.

6 Q (BY Mr. Snodgrass) Have you ever looked at any of

7 the documents State Farm produced in this case relating

8 to claims management software?

9 MR. KAHN: Objection. Form.

10 THE WITNESS: By when you say document, do you

11 mean printouts from the State Farm claims management

12 software?

13 Q No. I mean like training videos, that type of

14 thing, dealing with the claims management software?

15 **A No.**

16 Q Okay. And I assume that when you say cleaned out

17 some of the claims management software, are you talking

18 about the PDF claim files that you received and printed

19 hard copy?

20 **A Yes.**

21 Q Is that the only thing that you saw that was

22 related to claims management software in this case?

23 **A Yes.**

24 Q Okay. So let me ask you this, I assume that you

25 have no basis because you're not an expert in the area

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1 thousands of Mississippi structural damage claims.

2 Information within the Excel spreadsheets includes, and

3 then he goes on to discuss different data sets that were

4 produced. Did you review any Excel spreadsheets in this

5 case?

6 **A Yes.**

7 Q And what spreadsheets did you review?

8 **A (No response)**

9 Q Let me ask you this, are you just going to refer

10 me to the documents reviewed section of your opinion?

11 **A I'm going to go through the documents reviewed**

12 **section to get the Bates number to answer your question**

13 **with.**

14 Q I'll let it go because if that's what you would

15 do, then I can figure that out myself. Let me ask you

16 this, have you rendered any opinions based upon the

17 Excel spreadsheets in your report?

18 **A Yes. I think so.**

19 Q And where are those opinions set forth?

20 **A Well, they are set forth -- I think the**

21 **spreadsheets are part of the documents that would inform**

22 **me specifically concerning the following opinions.**

23

24

25

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1 to dispute anything that Mr. Johnson says relating to

2 Paragraphs 22 to 24?

3 MR. KAHN: Object on. Form.

4 THE WITNESS: What was your question again?

5 Q (By Mr. Snodgrass) Do you have any basis to

6 dispute anything in Paragraphs 22 to 24 based on the

7 fact you're not an expert on claims management software?

8 MR. KAHN: Object on. Form.

9 THE WITNESS: Well, not on that basis. But I

10 don't see anything that I dispute about 22 through 24.

11

12

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17 Q Mr. Johnson says that in his experience the data

18 points collected by State Farm's claims management

19 software is similar to the data points collected by

20 other property and insurance companies and their

21 respective claims management software. Do you have any

22 reason to dispute that?

23 **A No.**

24 Q 28, he talks about State Farm producing Excel

25 spreadsheets that include claim information for

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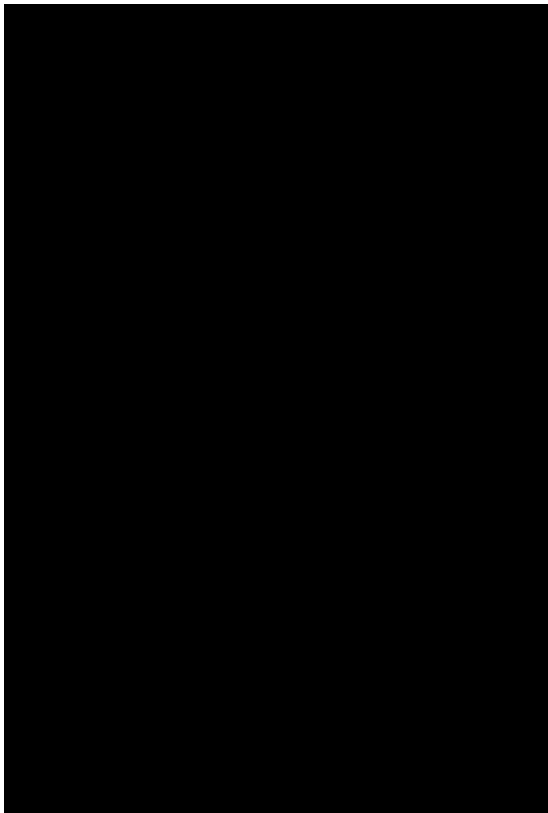
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1 THE WITNESS: I don't know that with  
2 certainty.  
3 Q (By Mr. Snodgrass) Okay. You were asked in a  
4 number of depositions so far whether or not you were  
5 aware that State Farm engaged in a supplemental payment  
6 program to pay for outstanding labor depreciat on  
7 claims in certain states. You were asked about that in  
8 prior deposit ons. Do you ever ask anybody about how  
9 easy it is to determine the damages that the Plaintiffs  
10 claim in this case?  
11 MR. KAHN: Objection. Form.  
12 THE WITNESS: No.  
13 Q (By Mr. Snodgrass) Okay. And so if it turns out  
14 that State Farm went through a process nearly dential  
15 to what Mr. Johnson says you should do, you have no  
16 knowledge of that one way or the other; correct?  
17 MR. KAHN: Objection. Form. Incomplete  
18 hypothetical.  
19 THE WITNESS: I don't know whether they did or  
20 not. But what I can tell you in this matter is that it  
21 wouldn't be accurately done the way t's been put forth  
22 by the Plaintiff.  
23 MR. SNODGRASS: Okay. Well, let's take t one  
24 step at a time. First off, do you know how State Farm  
25 did it when State Farm wanted to calculate the damages

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1 Q Well, first off, how -- in order to determine  
2 whether or not damages can be calculated, don't you have  
3 to know how the Plaintiffs are claiming damages can be  
4 calculated?  
5 MR. KAHN: Objection. Form.  
6 Q (By Mr. Snodgrass) Let me ask you this, do you  
7 understand or have any understanding about how the  
8 Plaintiffs' claimed damages can be calculated in this  
9 case?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: Yes. It's my understanding that  
12 the Plaintiff is asserting that all you need to do is  
13 find those people that fit within the State of  
14 Mississippi within a certain time frame who received  
15 only ACV payments. And somehow electronically figure  
16 out how much labor depreciation was taken in that  
17 process. And the total of that column, if you will, is  
18 the measure of the impact of labor depreciation, and I  
19 suspect a measure of the damages.  
20 Q (By Mr. Snodgrass) Okay. And so when you say  
21 that damages can't be calculated, let's step back and  
22 see what you know and what you don't know. Are you  
23 aware that State Farm pays for labor depreciation in  
24 certain states? Yes or no.  
25 MR. KAHN: Objection. Form.

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1 owed to people that were withheld, labor depreciat on,  
2 from their structural damages claims in other states?  
3 Do you know how State Farm d d those calculations?  
4 MR. KAHN: Object on. Form.  
5 THE WITNESS: No.  
6 Q (By Mr. Snodgrass) Okay. So if State Farm did t  
7 the exact way Mr. Johnson says that they should do t,  
8 you wouldn't have any information to dispute that one  
9 way or the other; correct?  
10 MR. KAHN: Object on. Form.  
11 THE WITNESS: Could you ask that again?  
12 Q (By Mr. Snodgrass) Sure. It would seem to me  
13 that if you were going to truly opine that class  
14 memberships and damages cannot be accurately determined  
15 for insureds the way Toby Johnson says they can, that  
16 somebody would have told you, hey, we've done this  
17 before, we have done t in multiple states before, and  
18 we d d it the same way kind of Toby Johnson just says we  
19 should do t. Would that be an important fact for you  
20 to know?  
21 MR. KAHN: Object. Form.  
22 THE WITNESS: Depends on what the "kind of"  
23 is.  
24 Q (By Mr. Snodgrass) Depends on what?  
25 **A What the kind of is. We kind of did it like that.**

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1 **What does that mean?**  
2 Q Okay. That's fair enough.  
3 MR. SNODGRASS: Could you please mark for the  
4 witness, exhibit t --  
5 MR. KAHN: Is this a good time to take a  
6 break, Joe?  
7 MR. SNODGRASS: Not if you want to leave at  
8 4:30.  
9 MR. KAHN: We want to leave at 4:30, but we  
10 have been going for about an hour.  
11 MR. SNODGRASS: We just took a break.  
12 MR. KAHN: We took a break to open the door.  
13 It's pretty steamy in here. If you've got a couple of  
14 quest ons, you're -- you doing okay, Mike?  
15 THE WITNESS: Yeah.  
16 MR. KAHN: Give you another couple of minutes.  
17 MR. SNODGRASS: We wound up taking much longer  
18 than a half an hour lunch break and that was the deal.  
19 So I don't know --  
20 MR. KAHN: My clock says 40 minutes for lunch.  
21 MR. SNODGRASS: Okay. Well, that means you're  
22 not leaving until 4:40.  
23 MR. KAHN: Joe, we talked about that because  
24 we got flights to catch. I understand you are in  
25 Minnesota, we are not.

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1 sure this was not filed under seal; right?  
2 MR. SNODGRASS: This was not filed under seal.  
3 Q (By Mr. Snodgrass) Do you see this Paragraph 5  
4 that identifies the steps?  
5 **A I'm still reading it.**  
6 **(brief pause)**  
7 Q (By Mr. Snodgrass) Have you had a chance to look  
8 at Paragraph 5?  
9 **A Yes. I've read it.**  
10 Q Okay. Do you know whether or not --  
11 MR. KAHN: If you need to read paragraphs in  
12 that exhibit, you're welcome to.  
13 MR. SNODGRASS: Just going to ask him about  
14 Paragraph 5.  
15 **A (By Mr. Snodgrass) Do you know whether or not the**  
16 **information, the process described in Paragraph 5,**  
17 **whether that can be followed to determine in State**  
18 **Farm's mind, the amount of damages at issue in the case?**  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: Like, I don't know -- you lost  
21 me on the in State Farm's mind. I don't know what State  
22 Farm would do to determine whatever they want to  
23 determine.  
24 Q (By Mr. Snodgrass) Fair enough. Do you know  
25 whether or not the process described by Mr. King in

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1 MR. SNODGRASS: We could limit lunch --  
2 MR. KAHN: Let's just go with whatever you are  
3 going to mark. Let's mark it so we can get moving.  
4 MR. SNODGRASS: That's what I suggest we do.  
5 Has it been marked?  
6 THE COURT REPORTER: You didn't tell me what  
7 letter. We've got A, B, C, D and F. Is 1, 2, 3, 4 and  
8 5.  
9 MR. SNODGRASS: E.  
10 (Exhibit No. 6 was marked for identification  
11 purposes)  
12 THE COURT REPORTER: All right.  
13 Q (By Mr. Snodgrass) Showing you, sir, what's been  
14 marked as Deposition Exhibit No. 6. This is a  
15 declaration of Alan King that was disclosed in the  
16 Lebriar case; correct? You see that?  
17 **A Yes.**  
18 Q And you were a witness, an expert witness, in that  
19 Lebriar case; is that true?  
20 **A Yes.**  
21 Q You know who Alan King is?  
22 **A No, I don't.**  
23 Q You see on Paragraph 5, that he describes a  
24 process to issue supplemental payments?  
25 MR. KAHN: Objection. Form. Joe, just making

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1 Paragraph 5 can be used to determine class membership  
2 and damages in this case?  
3 MR. KAHN: Object on. Form. Calls for a  
4 legal conclusion.  
5 **(brief pause)**  
6 Q (By Mr. Snodgrass) Do you, sir?  
7 **A Well, you know you really surprise me with this**  
8 **document. I don't know that I could -- I don't think I**  
9 **could form a conclusion about this in such a short time**  
10 **frame. I would want to read the entire document.**  
11 **Understand it's context. Why it came about. How it**  
12 **came about. What does it mean.**  
13 Q I just want to know -- I just want to know whether  
14 or not, those one, two, three, four, five, six bullet  
15 points can be used to determine -- not only determine  
16 but actually pay for damages in this case? Do you know  
17 whether or not that is true one way or the other?  
18 MR. KAHN: Object on. Form. And he told you  
19 he needed time to review the document in full and to  
20 study it.  
21 Q (By Mr. Snodgrass) Okay. Well, let's put it this  
22 way so we move on because I know that you want time to  
23 consider t. But certainly this puts in jeopardy all of  
24 your opin ons in this case about the inabil ty to  
25 calculate damages; correct?

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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: Absolutely not.  
3 Q (By Mr. Snodgrass) Well, what specifically --  
4 **A I said calculate damages accurately. That's two**  
5 **different things.**  
6 Q What in this paragraph leads you to believe that  
7 damages through this process could not be calculated  
8 accurately?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: Because it's my experience that  
11 the -- in working in the industry on a day-to-day basis,  
12 the most that a carrier pays to an insured after  
13 deductible is the reasonable and necessary cost to  
14 restore the property. This methodology, as I understand  
15 it in Exhibit M, Plaintiff's Exhibit 6, I have only had  
16 a few minutes to look at it, would not be able to  
17 determine if a policyholder, for instance, had already  
18 performed the work and done so for the estimated ACV  
19 that had already previously been paid.  
20 And that being the case, it's my  
21 understanding, working in the industry, that that is --  
22 that is more than sufficient to compensate an insured  
23 for a loss because they have been able to complete the  
24 restoration of the property for the amount of money  
25 previously paid.

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1 can't get actual cash value any more; correct?  
2 MR. KAHN: Objection. Form. Calls for a  
3 legal conclusion.  
4 THE WITNESS: As I've said a few times today,  
5 it's my experience in the industry, it seems very common  
6 sensical to me, that out here in the real world, people  
7 expect to be paid the reasonable and necessary  
8 replacement value or cost to restore their damaged  
9 property, not more than that. And I think this  
10 methodology that's been described in Plaintiff's Exhibit  
11 6 would compensate a number of people over and above  
12 what would actually be required to complete the repairs  
13 on their damaged property.  
14 Q (By Mr. Snodgrass) Okay. But you would agree  
15 with me that if actual cash value is the minimum amount  
16 that is owed under the policy, this would be a perfectly  
17 fine way to calculate damages?  
18 MR. KAHN: Objection. Form. Calls for a  
19 legal conclusion.  
20 THE WITNESS: Before I can answer that, I  
21 would want to take more time to review this and  
22 understand it in a wider context than you've provided  
23 for me the last ten minutes.  
24 Q (By Mr. Snodgrass) Well, I understand that. But  
25 as you can see, this isn't something coming from me.

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1 Q (By Mr. Snodgrass) So I think I understand what  
2 you're saying. Are you saying then what the insured  
3 actually spends to repair -- his or her property can  
4 affect the right to recover actual cash value of the  
5 loss?  
6 MR. KAHN: Objection. Form. Calls for legal  
7 conclusion.  
8 THE WITNESS: Yeah. As I have said throughout  
9 this deposition, I did not get into determining what  
10 someone is entitled to, or rights, or obligations under  
11 the policy or under the law. I'm simply telling you  
12 from my experience, and I think from a common sensical  
13 viewpoint, insurance policies, people have an  
14 expectation of, I've seen time and again, a policy pays  
15 them the necessary and reasonable costs to restore the  
16 property, not more than that. And I think this  
17 methodology that I've reviewed in just a few minutes,  
18 Plaintiff's Exhibit 6, would, in fact, could very easily  
19 compensate a number of people who had already received  
20 more than sufficient funds to accomplish the reasonable  
21 and necessary repair of their property.  
22 Q (By Mr. Snodgrass) Okay. So that's based on your  
23 belief, I guess, and your experience that if the  
24 policyholder has enough money to pay somebody to fix  
25 their property, that's the cap that they can get. They

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1 This is something coming from State Farm.  
2 But let me ask you this, as you sit here  
3 today, if it is determined that actual cash value is the  
4 minimum payment owed to the policyholder, can you think  
5 of any reason why the steps in Paragraph 5 could not be  
6 taken to calculate damages owed to the policyholder?  
7 MR. KAHN: Objection. Form. Incomplete  
8 hypothetical. Calls for speculation. Calls for legal  
9 conclusion. You can answer.  
10 THE WITNESS: I would want more time to review  
11 it in this context, especially against the backdrop of  
12 what is this document, where did it come from, at what  
13 time. I think it's just something that you've put in  
14 front of me and asked me to analyze in ten minutes, and  
15 I just think that's an unfair approach to ask me  
16 questions about it.  
17 Q (By Mr. Snodgrass) No. I understand that. And  
18 you can have more time. But I do get to ask you -- as  
19 you sit here today, can you think of any reason why if  
20 actual cash value is the minimum payment owed, why this  
21 cannot be used to determine damages. If you can think  
22 of something great, if you can't as you sit here today,  
23 that's fair too. You can just say, I can't think of  
24 anything, but I need more time to think about it.  
25 MR. KAHN: Objection. Form. Asked and

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1 answered. Calls for speculation. Calls for legal  
2 conclusion. You can answer.  
3 THE WITNESS: I would like to read t.  
4 THE COURT REPORTER: I need to change paper as  
5 well.  
6 MR. KAHN: You want to take a break, Joe?  
7 MR. SNODGRASS: Let her change paper and then  
8 we'll keep going. We are down to the last hour.  
9 MR. KAHN: Yeah. But we've been going for a  
10 little more than an hour now, hour and 15 minutes.  
11 MR. SNODGRASS: Let's take a few minutes then,  
12 boys. But like I said, we have already gotten away  
13 from --  
14 MR. KAHN: Off the record.  
15 (A short break was had; after which the  
16 following proceedings took place:)  
17 Q (By Mr. Snodgrass) Okay. Back to the Toby  
18 Johnson report. Paragraphs 32 through 38 he made  
19 certain statements about the data points needed to  
20 determine membership in a defined group. You've made  
21 some statements that are disputing class membership.  
22 But I think all of your primary arguments about  
23 Mr. Johnson's opinions are, and correct me if I'm wrong,  
24 please, are reflective of the fact that you believe the  
25 actual cost of repair, if they are lower than the actual

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1 Q (By Mr. Snodgrass) Okay. So certainly you're not  
2 disputing it, you're just not in a position to say one  
3 way or the other?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: Well, as I've said throughout  
6 this deposition, I'm not here to opine about legal  
7 conclusions or what might be owed under the contract, or  
8 what a judge's ruling should be paid or not paid, and  
9 wh ch one of the columns would be appropriate. I'm  
10 rather here to talk about what's done on a day-to-day  
11 basis in the industry, what are common practices, what  
12 are industry standards.  
13 Q (By Mr. Snodgrass) Right. And obviously you and  
14 I can disagree about that. But I'm just wondering, if  
15 the Court comes down and says, despite your 40 years of  
16 experience, actual cash value is the minimum payment, is  
17 there anything in 32 through 38 that's inaccurate?  
18 Because I won't get a chance to depose you if the Court  
19 holds the way I want it to hold, I need to ask you now.  
20 Is there anything that you can think of today that makes  
21 32 through 38 inaccurate if that's the holding in the  
22 case?  
23 MR. KAHN: Objection. Form. Asked and  
24 answered. Calls for legal conclusion.  
25 THE WITNESS: I guess I would want to see the

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1 cash value payment, mean that the policyholder has been  
2 -- the policyholder has suffered no economic damages.  
3 So I don't want to get in a fight between -- or keep  
4 going with the fight about what's the minimum payment on  
5 the policy -- under the policy. So let me ask you this,  
6 if the Court holds that actual cash value is the minimum  
7 amount of payment owed under the policy, do you know  
8 whether or not the opinions stated by Mr. Johnson in  
9 Paragraphs 32 through 38 are accurate?  
10 MR. KAHN: Object on. Form. Calls for a  
11 legal conclusion. You may answer.  
12 THE WITNESS: I need to read them first.  
13 MR. SNODGRASS: Please do.  
14 (Witness read through documents)  
15 THE WITNESS: Okay. I've read it.  
16 Q (By Mr. Snodgrass) Okay. So for Paragraphs 32  
17 through 38, just a reminder, if the Court holds that  
18 actual cash value is the minimum payment owed under the  
19 policy, so putting that dispute aside, is there -- if  
20 that's the holding, is there anything in Paragraphs 32  
21 through 38 that is inaccurate?  
22 MR. KAHN: Object on. Form. Calls for a  
23 legal conclusion.  
24 THE WITNESS: I don't think I'm in a position  
25 to answer that.

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1 ruling and try to interpret it. But as I've said,  
2 that's not my bailiwick. That's not -- I don't try to  
3 interpret the legal side of this, what the obligations  
4 are, what a court's determined.  
5 Q (By Mr. Snodgrass) Is there anything factually  
6 wrong that you can think of if the Court holds actual  
7 cash value is the minimum payment?  
8 MR. KAHN: Objection. Form. Calls for legal  
9 conclusion.  
10 THE WITNESS: As I've said before, I just  
11 think that's outside my bailiwick to be able to answer  
12 that.  
13 Q (By Mr. Snodgrass) That's fair. I just wanted to  
14 give you a chance to dispute something if you wanted to.  
15 As it relates to Paragraphs 39 through 44 of  
16 the Johnson report, same question. If the Court holds  
17 that actual cash value is the minimum payment owed under  
18 the policy, is there anything in Paragraphs 39 through  
19 44 of Mr. Johnson's report that you believe is  
20 inaccurate?  
21 MR. KAHN: Objection. Form. Calls for a  
22 legal conclusion.  
23 (Witness read documents)  
24 THE WITNESS: Okay. I've read it.  
25 Q (By Mr. Snodgrass) Okay. Again, assuming the

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1 Court rules that actual cash value is the minimum  
2 payment -- the minimum amount owed under the policy, is  
3 there anything in Paragraphs 39 through 44 that you  
4 believe to be inaccurate?  
5 MR. KAHN: Object on. Form. Calls for a  
6 legal conclus on.  
7 THE WITNESS: Well, again, I don't have any  
8 opin on on what the impact of a court ruling might be or  
9 might not be. But as I understand items 39 through 44,  
10 these concern -- these fall under the heading of time  
11 estimates. And it seems like Mr. Johnson's trying to  
12 say that this isn't going to take very much time to  
13 figure out what he thinks he can figure out. And I can  
14 tell you from my analysation of the four claim files  
15 that I performed that are part of my report, that I  
16 really take issue that he could do this as quickly as he  
17 thinks he can.  
18 Q (By Mr. Snodgrass) Well, let me ask you this, did  
19 you attack his time estimates in any of your written  
20 opin ons?  
21 MR. KAHN: Object on. Form.  
22 THE WITNESS: No, I did not. I did not opine  
23 about how much time it would take.  
24 Q (By Mr. Snodgrass) Okay. And Mr. Johnson, it  
25 doesn't say -- let me ask you this, my understanding was

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1 [REDACTED]  
2 [REDACTED]  
3 Q Well, Mr. Johnson does not say that he went  
4 through the PDF file. In fact, he says that he would  
5 need the claims management software. So let's try to be  
6 clear. Mr. Johnson's opinions are based upon access to  
7 the software, not a big stack of printed out documents.  
8 Do you understand that?  
9 MR. KAHN: Object on. Mischaracterizes  
10 Mr. Johnson's opinion. And the form of the question.  
11 THE WITNESS: I understand what Mr. Johnson is  
12 saying here. But I've looked at lots of claim files in  
13 my life, and lots of estimates. And if a person wanted  
14 to really be accurate -- I mean, I'm not saying he can't  
15 come up w th some kind of an answer. I'm sure he can  
16 come up w th an answer in two or three minutes. But I  
17 would really question as to whether it's an accurate  
18 answer or not.  
19 Q (By Mr. Snodgrass) Be that as t may, first off,  
20 you, yourself, never looked at the insurance company's  
21 claims management software; right?  
22 **A That's right.**  
23 Q And so whether or not that cuts the time to review  
24 a file in half, in tenths, or even quicker, you don't  
25 know one way or the other because you've never used the

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1 you didn't do what Mr. Johnson said he would do. He  
2 says that he would -- it would only take a certain  
3 amount of time about having access to the electronic XLS  
4 file -- I'm sorry. Electronic ESX file and the claims  
5 management software. Did you have access to the ESX  
6 file when you did your analysis?  
7 MR. KAHN: Objection. Form.  
8 THE WITNESS: No.  
9 Q (By Mr. Snodgrass) Okay. Did you try to estimate  
10 how long t would take then -- well, obv ously you  
11 didn't then make any estimates on how long it would take  
12 to manipulate ESX data; correct?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: That's right.  
15 Q (By Mr. Snodgrass) And did you have access to  
16 State Farm's claims management software when you were  
17 doing your process of review?  
18 **A No.**  
19 Q In fact, did they just give you a big stack of PDF  
20 papers and say, figure it out?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: No. That's not what they d d.  
23 Q (By Mr. Snodgrass) What did they do?  
24 [REDACTED]  
25 [REDACTED]

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1 claims management software; correct?  
2 **A I have not used it. But I really take issue that**  
3 **anybody could do that kind of analysis in just two or**  
4 **three minutes.**  
5 Q And in fact, Mr. King's declarat on describes the  
6 process very similar to Mr. Johnson's process; correct?  
7 MR. KAHN: Object on. Form.  
8 THE WITNESS: I don't know.  
9 Q (By Mr. Snodgrass) Okay. Are you aware of  
10 anybody who actually had access to the ESX file, who had  
11 access to claims management software, who was a trained  
12 insurance adjuster who actually adjusted claims, do you  
13 have any idea as to how long it would take someone like  
14 that to handle the file? Or would you just be  
15 speculating based on the fact you've never adjusted a  
16 claim in your life, you've never used claims management  
17 software in your life? Let me know.  
18 MR. KAHN: Object on. Form. Incomplete  
19 hypothetical.  
20 THE WITNESS: I think a lot of it would depend  
21 on the abil ties of the individual person.  
22 Q (By Mr. Snodgrass) Well, certainly you would  
23 agree with me that you're not an expert on claims  
24 management software. You're not an expert on insurance  
25 adjusting. You've never adjusted a property insurance

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1 claim in your life. And you really have no foundation  
2 to determine how long it would take to analyze these  
3 issues having full access to that type of software and  
4 resources, do you?

5 MR. KAHN: Objection. Form.

6 THE WITNESS: I have not used those resources.  
7 But based on my own experience and understanding how  
8 Xactimate, ESX files work, and having been in ESX files  
9 before on my own computer, I still find it kind of  
10 laughable that he thinks he can do that in two or three  
11 minutes.

12 Q (By Mr. Snodgrass) So how long do you think it  
13 would take to toggle on and off the depreciation  
14 settings? Let's take it one step at a time. Once the  
15 ESX file is booted up onto your laptop, how long does it  
16 take you to navigate to the depreciation options screen?

17 MR. KAHN: Objection. Form.

18 THE WITNESS: I don't know. I've never timed  
19 myself.

20 Q (By Mr. Snodgrass) You think it takes more than  
21 five seconds or less than five seconds?

22 MR. KAHN: Objection. Form.

23 THE WITNESS: More than five seconds.

24 Q (By Mr. Snodgrass) Ten seconds?

25 **A More than ten.**

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1 Q (By Mr. Snodgrass) Okay. Well, let's -- we are  
2 still back on the ESX file. How long is t going to  
3 take you to toggle on and off the depreciation opt on  
4 setting?

5 MR. KAHN: Objection. Form. Asked and  
6 answered.

7 Q (By Mr. Snodgrass) Under a minute?

8 **A I'm not sure. I would want to -- I would want to**  
9 **test it to be able to answer the question.**

10 Q Okay. And you've never tested it; correct?

11 **A I haven't timed myself. No.**

12 Q Okay. And based on your experience with claims  
13 management software, how long does it take you to get to  
14 the file notes in claims management software?

15 MR. KAHN: Objection. Form.

16 THE WITNESS: I have not used claims  
17 management software.

18 Q (By Mr. Snodgrass) So would you think that took  
19 more than five seconds or under five seconds?

20 MR. KAHN: Objection. Form.

21 THE WITNESS: I don't know.

22 Q (By Mr. Snodgrass) Is t possible that  
23 Mr. Johnson's opinions were rather conservative? In  
24 other words, this might take under a minute for a lot of  
25 claims?

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1 Q You think you can get -- once the program's  
2 actually loaded with the ESX file, it's going to take  
3 you longer than ten seconds to get to the depreciation  
4 option screen?

5 MR. KAHN: Objection. Form.

6 THE WITNESS: Yes.

7 Q (By Mr. Snodgrass) How many seconds is it going  
8 to take you to get to the depreciation option screen?

9 MR. KAHN: Objection. Form.

10 THE WITNESS: I don't know. I would have to  
11 sit down and go through the process to determine it.

12 Q (By Mr. Snodgrass) You going to take an hour for  
13 you to get to the depreciation option screen?

14 MR. KAHN: Objection. Form. He said he  
15 doesn't know.

16 Q (By Mr. Snodgrass) Well, if you don't know how  
17 long it's going to take to get the depreciation option  
18 screen, why would you challenge Mr. Johnson's opinion  
19 that this is going to take a couple, three minutes?

20 MR. KAHN: Objection. Form.

21 THE WITNESS: I challenge it based on my  
22 experience using Xactimate, ESX files, and analyzing  
23 claim files. Trying to make the determination that he's  
24 tried to outline here, I don't think that can be done in  
25 two to three minutes.

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1 MR. KAHN: Object on. Form. Speculation.

2 THE WITNESS: I don't think so based on my own  
3 experience.

4 Q (By Mr. Snodgrass) Based on your experience. All  
5 right. Have you watched an adjuster adjust a claim?

6 **A You mean, follow him around from the time he**  
7 **showed up on a jobsite all the way until he --**

8 Q Yeah. Have you ever shadowed a claims adjuster,  
9 watched him do all the entrances in Xactimate and then  
10 claims management software?

11 **A You mean sit there right beside him and watch**  
12 **every entry?**

13 Q Yeah.

14 **A No. I've never had an occasion to do that.**

15 Q You've never even seen anybody adjust a property  
16 claim before in your life?

17 MR. KAHN: Object on. Asked and answered.

18 THE WITNESS: Sure I have. I've seen it lots  
19 of times.

20 Q (By Mr. Snodgrass) But never from start to  
21 finish?

22 **A Well, not every single -- not every single step,**  
23 **every piece of paper filed in a file or pencil**  
24 **sharpened. I didn't watch the whole thing, but I'm**  
25 **familiar with what goes on. I've seen it hundreds of**

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1 times.  
2 Q When have you seen it hundreds of times? I  
3 thought you haven't been in the field for 10 to 15  
4 years?  
5 MR. KAHN: Objection. Form.  
6 THE WITNESS: I have been in business now for  
7 40 years. So I've seen lots of things in that 40 years.  
8 Q (By Mr. Snodgrass) I understand that. But in the  
9 last 10 to 15 years, you haven't seen anybody adjust a  
10 claim live, have you?  
11 **A Yes, I have.**  
12 Q When?  
13 **A Pardon me?**  
14 Q When? If you haven't been in the field, when have  
15 you seen somebody adjust a claim?  
16 **A You asked me if I had been on a construction**  
17 **project. That's different from being in the field.**  
18 Q You've been in the field?  
19 **A What do you call the field?**  
20 Q Out of your office.  
21 **A Yes.**  
22 Q Okay. Have you met with adjusters out of your  
23 office?  
24 **A Yes.**  
25 Q Have you done so in other states in the last 10 to

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1 15 years?  
2 **A Yes, I have.**  
3 Q In what states?  
4 **A Texas, Louisiana, of course Oklahoma. Those are**  
5 **the only ones I can think of as I'm sitting here right**  
6 **now based strictly from memory.**  
7 Q As it relates to the -- as it relates to your  
8 review of the exemplar claim files, was your primary  
9 task in looking at these claim files to look at what the  
10 actual cost of repairs might have been after the payment  
11 of the ACV created by the insurance company?  
12 MR. KAHN: Objection. Form.  
13 THE WITNESS: No. That wasn't my primary  
14 task.

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Q Well, I understand that. But in your career,  
having never handled a single claim as an adjuster  
before in your life, maybe somebody would want to know  
whether or not these were actually randomly sampled or  
selected by the attorneys. Do you know?

**A I don't know.**

MR. KAHN: Objection. Form.

Q (By Mr. Snodgrass) Can you tell me why in all of  
these file reviews, you were looking at the facts and  
circumstances that took place after the actual cash  
value payment? What was relevant about that?

MR. KAHN: Objection. Form.

THE WITNESS: I guess I don't know whether --  
I'm not sure I understand your question.

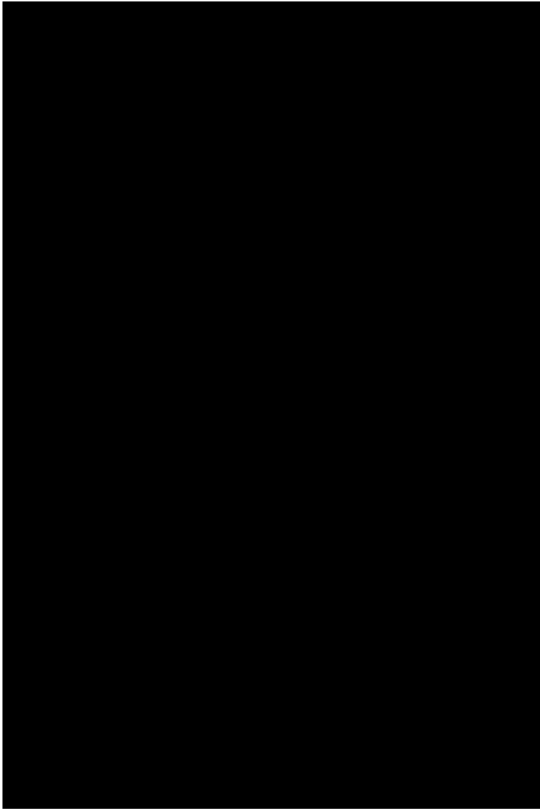
Q (By Mr. Snodgrass) Well, in other words, why is  
it relevant what happens after the actual cash value  
payment in determining whether or not an actual cash  
value payment was sufficient?



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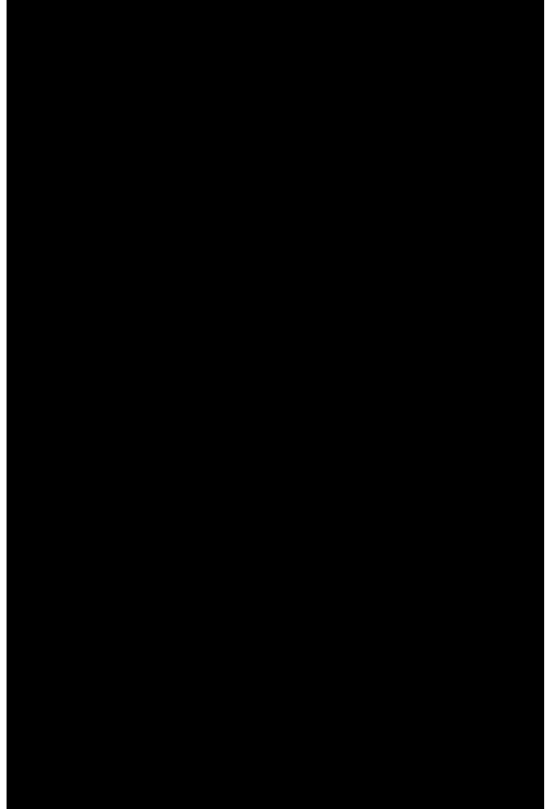
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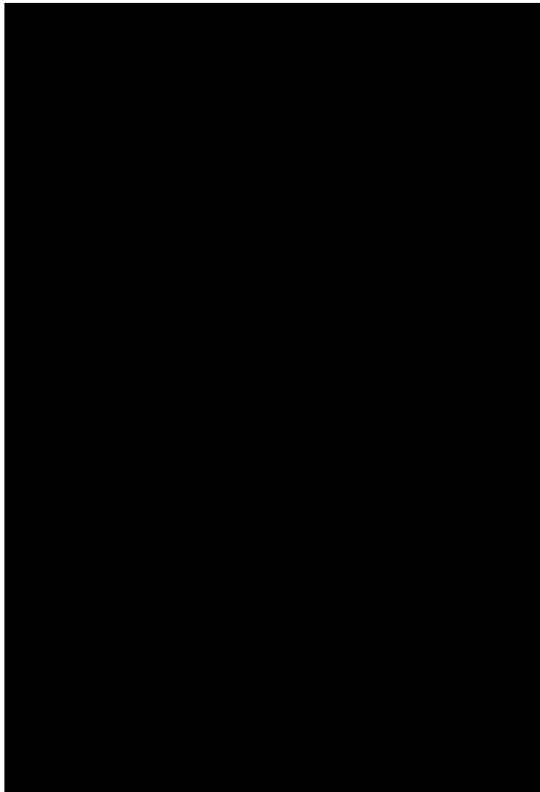
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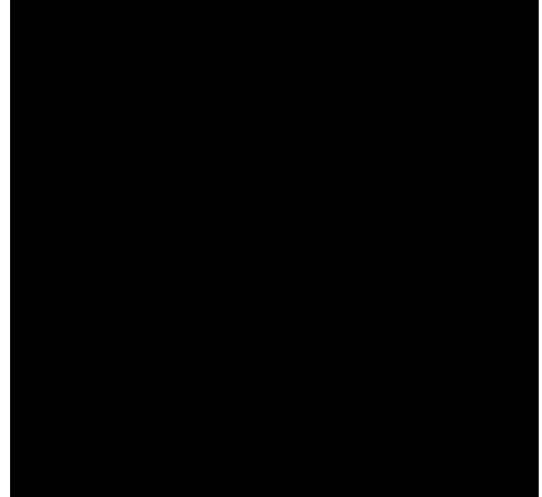
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Q (By Mr. Snodgrass) You told me that. I just want to know if the Court rules in our favor, did you determine the amount of labor depreciation withheld? It's a yes or no question.

MR. KAHN: Objection. Form. Calls for legal conclusion. And it's been asked and answered twice already.

MR. SNODGRASS: It's been asked at least twice, I will agree there.

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1 MR. KAHN: And you've had an answer. If you  
2 got anything to add, you can add.

3 THE WITNESS: I don't have anything to add to  
4 that.

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21 Q No. I don't need you to do t. Would t take you  
22 only seconds to determine nonmaterial depreciat on from  
23 that Excel spreadsheet? Is that true?

24 MR. KAHN: Objection. Form.

25 THE WITNESS: I don't know. I guess we could

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 14 [REDACTED]  
 15 [REDACTED]  
 16 Q (By Mr. Snodgrass) Well, so let me ask you this,  
 17 so if a person doesn't to do any work, decides not to do  
 18 any work, are they entitled to ACV as a minimum?  
 19 MR. KAHN: Objection. Form. Calls for a  
 20 logical conclusion.  
 21 THE WITNESS: As I've said before in this  
 22 deposition, I don't feel like I'm in a position to  
 23 render an opinion on what someone's entitled to under  
 24 the insurance contract.  
 25 Q (By Mr. Snodgrass) Okay. So let me ask you this,

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1 chasers can be unlicensed contractors that come by after  
 2 hailstorms and try to get people to let them do work?  
 3 A Yes.  
 4 Q Okay. So if State Farm owes a policyholder  
 5 \$8,000, but an unlicensed storm chaser comes by and  
 6 drops of a bid to do the work for \$5,000, does State  
 7 Farm get to use the benefit of that unlicensed storm  
 8 chaser bid to lower the ACV payment? Does that  
 9 typically happen in your experience?  
 10 MR. KAHN: Objection. Form. Calls for a  
 11 legal conclusion.  
 12 THE WITNESS: I have never seen that -- never  
 13 seen a carrier adjust the ACV downward because of what  
 14 you've described.  
 15 Q (By Mr. Snodgrass) Okay. So if a bid can't  
 16 adjust -- if a bid from an unlicensed contractor doesn't  
 17 result in an ACV bid being adjusted down, why would you  
 18 ever adjust an ACV payment down?  
 19 MR. KAHN: Objection. Form. Incomplete  
 20 hypothetical.  
 21 THE WITNESS: Well, because there are a number  
 22 of variables involved. As I say in my report, once the  
 23 work starts, sometimes things are added to the claim for  
 24 additional damages that are discovered. Sometimes  
 25 things have been estimated one way or found to be

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1 if the policyholder hires a cheap unlicensed contractor  
 2 and gets the work done for less than the actual cash  
 3 value, under your analysis, what's the policyholder's  
 4 damages, as you've figured out damages in your report?  
 5 MR. KAHN: Objection. Form. Calls for a  
 6 logical conclusion. Incomplete hypothetical.  
 7 THE WITNESS: Now again, I don't interpret  
 8 insurance policies. But I don't think -- I don't think  
 9 the insurance policy has any -- at least in my  
 10 experience, the selection of a contractor, who you use,  
 11 how the work is performed, and under what business  
 12 arrangement is strictly between the policyholder and  
 13 whoever they want to hire as a vendor. I've never seen  
 14 an insurance policy have -- insurance carrier have some  
 15 sort of responsibility in selecting the contractor for  
 16 the homeowner or making sure the work was done properly.  
 17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED] So let me ask you this, have you seen or  
 21 heard of the phrase, storm chasers?  
 22 MR. KAHN: Objection. Form.  
 23 Ms. Characterizes testimony. Go ahead.  
 24 THE WITNESS: Yes, I have.  
 25 Q (By Mr. Snodgrass) Are you familiar that storm

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1 savable, they are cleanable instead of replaceable,  
 2 being replaced. So the scope of work in my experience  
 3 remains somewhat fluid in the cost connected thereto  
 4 until the work is actually completed.  
 5 Q And if the work's never completed, is it still a  
 6 fluid situation?  
 7 MR. KAHN: Objection. Form. Incomplete  
 8 hypothetical.  
 9 THE WITNESS: Well, I think if the work is  
 10 never completed or never started, then we have to go  
 11 with an estimated RCV and an estimated ACV because  
 12 that's the best that can be put forth by any person at  
 13 that time.  
 14 Q (By Mr. Snodgrass) So you would agree then if no  
 15 work is ever done, that the ACV should be based on the  
 16 estimated ACV?  
 17 MR. KAHN: Objection. Calls for a legal  
 18 conclusion.  
 19 THE WITNESS: I would fall back on how I  
 20 described things in my report under -- in Page No. 3.  
 21 How it's typically done in the industry. What insurance  
 22 company decides to pay or not pay, I think involves  
 23 interpretation of the policy specifically. And that's  
 24 outside my expertise to opine about.  
 25 Q (By Mr. Snodgrass) Were you asked to assume any

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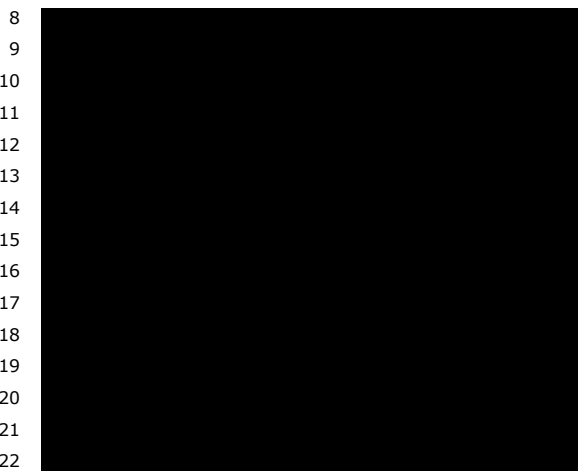
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1 type of insurance policy interpretation in this case by  
2 the attorneys?

3 **A No.**

4 Q Are you -- you're offering your interpretation of  
5 the term ACV based on your, not an assumption of  
6 counsel, but based on your experience?

7 MR. KAHN: Objection. Form.



23 Q (By Mr. Snodgrass) You have any -- you're not an  
24 expert in accounting; correct?

25 **A No.**

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1 Q You're not an expert in he econom cs; correct?

2 **A That's right.**

3 Q You testified on behalf of State Farm  
4 approximately how many times?

5 **A When you say testified, do you mean at deposition  
6 or trial.**

7 Q Yeah.

8 **A As best I sit here just to try to approximate it,  
9 it would probably be somewhere in the order of 15 and 30  
10 times.**

11 Q (By Mr. Snodgrass) Well, in your prior  
12 deposition, you've testified that you've testified for  
13 State Farm over 20 times. Now your range seems to be  
14 getting both bigger and smaller. Have you testified for  
15 State Farm more than 20 times?

16 MR. KAHN: Object on. Form.

17 THE WITNESS: Well, some time has passed since  
18 my last depos t on that you've read. So of course those  
19 numbers are going to change.

20 Q (By Mr. Snodgrass) Well, right. One would assume  
21 they would go up and not down?

22 **A Right. I'm giving you the best approximation that  
23 I can as I sit here. So I stand by 15 to 30.**

24 Q Does your company do residential and commercial  
25 construct on work?

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1 **A Yes.**

2 Q What's the breakdown between the two?

3 **A It would be impossible for me to give you some  
4 kind of a percentage or dollar figure. I just haven't  
5 measured it that way.**

6 Q Well, I mean, you must know. You must have a  
7 reasonable range. Do you do 100 percent commercial and  
8 zero percent residential? Is it 50/50? You have to  
9 know.

10 **A It varies from year to year. But I would say  
11 presently it's probably somewhere in the order of 70  
12 percent residential and 30 percent commercial.**

13 Q When you say you do res dential, what percentage  
14 is remodeling projects versus what is storm casualty  
15 projects?

16 **A That, I don't know.**

17 Q Is most of it remodeling?

18 **A I would just -- best thing I could so is just from  
19 year to year it's somewhere probably around 50/50.**

20 Q 50/50 remodeling versus storm?

21 **A Yes.**

22 Q Are you considered a roofer or a general? I mean,  
23 like the 13 guys that work for you, what's their trades?

24 **A Then are -- I am considered to be a general  
25 contractor. The people that work for me are estimators,**

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1 **building consultants, project managers, accounting  
2 people, superintendents, carpenters, and what would be  
3 called laborers.**

4 Q So let me get this straight, if you're a general  
5 contractor, you don't have a roofing crew though; right?

6 **A That's right. We do not do roofing ourselves.**

7 Q Okay. For a simple storm roof project, State Farm  
8 usually doesn't pay general contractors to get involved;  
9 right?

10 MR. KAHN: Objection. Form.

11 THE WITNESS: It's just a lot of variables  
12 there. It's too hard to answer that.

13 Q (By Mr. Snodgrass) Well, do you do routine hail  
14 roof claims?

15 **A From year to year depending on the size, depending  
16 on if it's a repeat customer. Still a lot of variables  
17 in there.**

18 Q Will you do individual homeowner roofing claims?

19 **A Yes, we will.**

20 Q How many have you done in the last five years?

21 **A I don't know.**

22 Q Under five?

23 **A More than that.**

24 Q What's the smallest project you'll do for a new  
25 customer?

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1 **A Depends on who it is and why.**  
 2 Q If it's a member of the general public, not your  
 3 daughter-in-law, what is the smallest project you'll  
 4 typically take on?  
 5 **A Probably \$500. Something like that.**  
 6 Q You'll general a project for \$500?  
 7 **A That's a project that we would take on.**  
 8 Q Give me an example of a \$500 project where would  
 9 you act as a general contractor?  
 10 **A Where maybe someone's home has been burglarized.**  
 11 Q And you'll hire subs and oversee that project for  
 12 \$500?  
 13 **A If we need to. Some of it we would probably do**  
 14 **ourselves with our own forces.**  
 15 Q So that gets back to what trades do you have on  
 16 staff that can do it w th your own forces? What do you  
 17 have?  
 18 MR. KAHN: Object on. Form. Asked and  
 19 answered.  
 20 THE WITNESS: We have people on our staff that  
 21 can do general construction work. They can pour  
 22 concrete, install cabinets, cabinet tops, doors,  
 23 baseboard, casing, Sheetrock, texture, painting. They  
 24 can do some roofing, landscaping, framing, soff t, facia  
 25 the gutter, install windows, hang blinds.


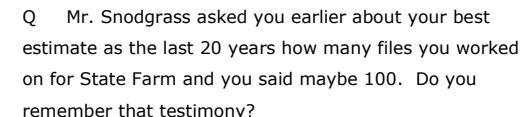
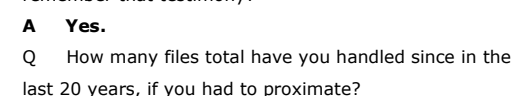
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1 **use 27.**  
 2 Q Are you prof cient in version 28?  
 3 **A Yes.**  
 4 Q Why do you use 27?  
 5 **A I just prefer it.**  
 6 Q I take it your company -- you still haven't been  
 7 surveyed by Xactimate?  
 8 MR. KAHN: Object on. Form.  
 9 THE WITNESS: I'm sorry?  
 10 Q (By Mr. Snodgrass) Has your company ever been  
 11 surveyed by Xactwork Solutions for purposes of Xactimate  
 12 software pricing?  
 13 MR. KAHN: Object on. Form.  
 14 THE WITNESS: Not that I know of.  
 15 MR. SNODGRASS: All right. That's all I've  
 16 got.  
 17 MR. KAHN: All right. Give me a minute, Joe.  
 18 I may have a couple of follow-up. I'm going to step out  
 19 for a minute.  
 20 (A short break was had; after which the  
 21 following proceedings took place:)  
 22 CROSS EXAMINATION  
 23 BY MR. KAHN:  
 24 Q Mr. Berryman, how are you feeling?  
 25 **A Good.**

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1 Q (By Mr. Snodgrass) Will any of your guys do  
 2 roofing?  
 3 **A Yes.**  
 4 Q Have you ever done a roofing project with your own  
 5 crew recently?  
 6 MR. KAHN: Objection. Form.  
 7 THE WITNESS: No.  
 8 Q (By Mr. Snodgrass) When is the last time you used  
 9 your own crew to do a roofing project?  
 10 **A In the winter of this past year, December, January**  
 11 **of 2018.**  
 12 Q You d d your own crew to do a roofing project?  
 13 **A Yes.**  
 14 Q In your prior deposition you testified that you  
 15 didn't know if your vers on depreciated labor. Do you  
 16 know if your version of Xactimate depreciates labor?  
 17 MR. KAHN: Objection. Form.  
 18 THE WITNESS: The version I have right now, I  
 19 believe does not. But I would need to check that.  
 20 Q (By Mr. Snodgrass) And you're saying you're using  
 21 vers on 28?  
 22 **A I use 27.**  
 23 Q Wait a second. I thought you testified earlier  
 24 that you use vers on 28.  
 25 **A My company has both 27 and 28, but I personally**

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1 Q All right. Couple of questions for you here.  
 2 Very early on I talked about there are two different  
 3 rates that you charge in this case; one for preparation  
 4 of a report, one for testimony either deposition or  
 5 trial testimony; right?  
 6 **A Yes.**  
 7 Q Those are the same rates that you're charging  
 8 State Farm; correct?  
 9 **A Yes.**  
 10   
 11   
 12   
 13 Q Mr. Snodgrass asked you earlier about your best  
 14 estimate as the last 20 years how many files you worked  
 15 on for State Farm and you said maybe 100. Do you  
 16 remember that testimony?  
 17 **A Yes.**  
 18 Q How many files total have you handled since in the  
 19 last 20 years, if you had to proximate?  
 20 **A I would say it's in excess of 1200.**  
 21 Q Do you recall Mr. Snodgrass asked you whether or  
 22 not you talked to State Farm employees to verify what  
 23 State Farm does in Mississippi?  
 24 **A Yes.**  
 25 Q And you said you didn't talk to any employees;

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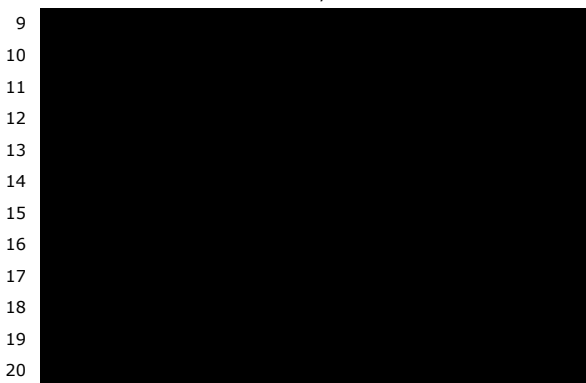
1 correct?  
2 **A Yes.**  
3 Q Did you review declaration of Juan Guevara in this  
4 case?  
5 **A Yes.**  
6 Q And did that declaration discuss any of State  
7 Farm's practices in Mississippi?  
8 **A Yes.**  
9 Q Did you rely upon that in forming your opinions in  
10 this case?  
11 **A Yes.**  
12 Q You said you also reviewed Ms. Mitchell's claim  
13 file that was a Mississippi loss; correct?  
14 **A Yes.**  
15 Q And there was a contractor invoice in that file?  
16 **A Yes.**  
17 Q You also reviewed four exemplar files from members  
18 of the punitive class; is that right?  
19 **A Yes.**  
20 Q Were there contract -- Mississippi contractor  
21 invoices in those files?  
22 **A Yes.**  
23 Q Did you consider all those materials in forming  
24 your opinions as to State Farm and other insurance  
25 company practices in Mississippi?

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1 Q Were you able to tell by looking at Ms. Mitchell's  
2 estimate whether or not State Farm applied depreciation  
3 to labor costs?  
4 **A Yes. I would think so by looking at the line**  
5 **item. For instance, painting of a room, or replacement**  
6 **of drywall. That depreciation on that line indicates**  
7 **that that material and labor are both being depreciated.**  
8 Q And is it your view that you need to be an expert  
9 to make that determinat on?  
10 **A I don't think so. I think that would be common**  
11 **sense for people to read that and understand that.**  
12 Q Let me just make sure. If you would turn to  
13 Exhibit 5. It's the opinion of Mr. Johnson.  
14 **A Yes.**  
15 Q You were asked some questions about Paragraphs 12  
16 through 21. And I want to direct you in particular to  
17 Paragraph 14.  
18 **A Yes.**  
19 Q The end of that, the last sentence in that  
20 paragraph states, once all the line tems are entered,  
21 the software calculates the amounts of replacement  
22 costs, actually cash value, net actual cash value, open  
23 paren, ACV minus the deductible, close paren, as well as  
24 various categories of depreciation mandated by the  
25 insurance company to be depreciated.

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1 **A Yes.**  
2 Q Mr. Berryman, if you would pull out Exhibit 2, a  
3 copy of your report, and turn to Page 19.  
4 MR. SNODGRASS: Excuse me.  
5 MR. KAHN: I'm sorry, Page 19.  
6 MR. SNODGRASS: All right.  
7 MR. KAHN: Let me know when you're there, Joe.  
8 MR. SNODGRASS: Okay.



21 Q Okay. Mr. Berryman, you were asked some  
22 questions, about whether State Farm's estimate for  
23 Ms. Mitchell clearly set out labor depreciation numbers.  
24 Do you remember that?  
25 **A Yes.**

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1 In your experience do insurance companies  
2 mandate that certain repair items be depreciated?  
3 **A I mean, certainly they do from time to time**  
4 **depending on how the policy reads.**  
5 Q And who determines the amount of that  
6 depreciation?  
7 **A The adjuster would typically make observations or**  
8 **acquire about the age of a particular component, and**  
9 **then once that age is put into the computer, there's**  
10 **already a typically a lifespan on the product, roof**  
11 **jack, window screen, window, what have you, that has**  
12 **preestablished the expected lifespan of the material.**  
13 **So the computation becomes somewhat automatic after the**  
14 **age of the component is entered into the computer.**  
15 Q And so in following on that, might there be  
16 certain components as to wh ch t's not necessary to  
17 apply depreciat on? For example a brand new roof that  
18 is destroyed the day after it's put on by hail?  
19 **A That's right.**  
20 Q If you turn in the same report to Paragraphs 32  
21 through 38 in Exhibit 5. You were asked some quest ons  
22 about whether Mr. Johnson's opin ons in this report  
23 would be correct if a court reached a part ular  
24 conclus on as to language in State Farm's policy. Do  
25 you remember those quest ons?



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1 **A Yes.**  
2 Q In your view, what do you believe is necessary to  
3 determine whether or not somebody received a sufficient  
4 payment of actual cash value?  
5 **A Well, I think, as I've outlined in my report, I**  
6 **think you have to do a careful study of what was**  
7 **actually required to restore it. Because as I have said**  
8 **in my report, different people take different viewpoints**  
9 **on how the work should be effectuated. What's**  
10 **originally estimated is not always what's actually**  
11 **necessary to perform. Sometimes the expected costs come**  
12 **in substantially less than were originally estimated.**  
13 **So those sorts of things need to be evaluated.**  
14 **A person needs to make a site visit to see what was**  
15 **actually done, what was not done, what was downgraded,**  
16 **what was upgraded. So there's kind of a wide array of**  
17 **things that need to be analyzed in order to make that**  
18 **determination.**  
19 Q And have you seen, in your experience, instances  
20 where an ACV estimate made by the carrier is overstated  
21 regardless of whether or not -- I'm sorry. Strike that.  
22 Have you seen instances where you've determined that the  
23 ACV figure estimated is overstated regardless of whether  
24 the insured has had any repairs done?  
25 **A Yes.**

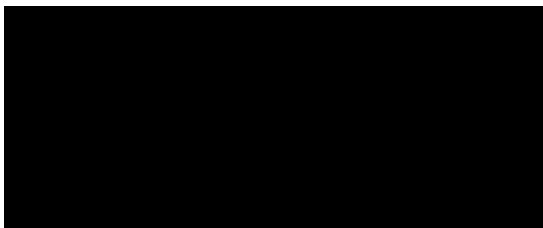
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1 estimate the amount of withheld nonmaterial depreciation  
2 could be calculated in four to six minutes per claim on  
3 average. Do you see that?  
4 **A Yes.**  
5 Q Do you believe it's possible, Mr. Berryman, to  
6 determine with accuracy whether or not a payment of ACV  
7 was sufficient using solely a PDF claim file and  
8 spreadsheet?  
9 **A No. Absolutely not. And I also dispute that it**  
10 **would take four to six minutes, because based on my own**  
11 **experience in this matter, analyzing claim files,**  
12 **without the ESX files as he describes, I would certainly**  
13 **spend a lot more time than four to six minutes doing it.**  
14 Q Last question, Mr. Berryman. You've testified  
15 that in the course of your experience, you testified  
16 somewhere between 15 and 30 times for State Farm; is  
17 that right?  
18 **A Yes.**  
19 Q How many years does that cover?  
20 **A That would be over a 20-year period.**  
21 Q In the last four to five years, how many times  
22 would you estimate you've testified for State Farm?  
23 **A In the last four or five years, I would say**  
24 **probably somewhere on the order of six to seven. But I**  
25 **can count those to be sure.**

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1 Q And did you come to that conclusion for  
2 Ms. Mitchell's claim?  
3 **A Yes.**  
4 Q Was there any way for you to determine that except  
5 by reviewing the claim file and doing an inspection?  
6 **A No. It would require reviewing the claim file,**  
7 **including the documentation provided from contractors,**  
8 **making a site inspection. Everything that I've done in**  
9 **that matter would be necessary for me to make an**  
10 **accurate determination about the estimated RCV and**  
11 **estimated ACV where appropriate.**  
12 Q And that's regardless of whether repairs have been  
13 done?  
14 **A Yes.**  
15 Q If you would turn to Paragraph 43 of Mr. Johnson's  
16 report. Exhibit 5.  
17 **A Yes.**  
18 Q Do you see it states, even without the Xactimate  
19 ESX file and access to the insurance company's claims  
20 management software, and relying solely on the extracted  
21 spreadsheet data and PDF data as provided by State Farm,  
22 the objective data sought can still be readily obtained  
23 to determine the amount of withheld nonmaterial  
24 depreciation for a particular claim. By merely relying  
25 on the extractable PDF data and spreadsheet data, I

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1 Q How many other depositions or testimony have you  
2 given during that same time frame?  
3 **A In the last four to five years, I would say it's**  
4 **on the order of 55 to 60 times.**  
5 MR. KAHN: Okay. I have no further -- hang on  
6 a second. That's all we got.  
7 REDIRECT EXAMINATION  
8 BY MR. SNODGRASS:  
9   
10  
11  
12  
13  
14  
15  
16 MR. SNODGRASS: Again, Counsel, we would ask  
17 for all the billing records. This didn't show up. And  
18 especially for O'Conner and McAfee, we're going to want  
19 that engagement letter ASAP. And we're going to want  
20 for this guy too.  
21 Q (By Mr. Snodgrass) You talked about 1200 files.  
22 And I didn't understand what you were talking about.  
23 What's this 1200 files you were referring to?  
24 **A In the course of career as a building consultant**  
25 **expert that I've been involved or hired in at least 1200**



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1 **occasions. I've been hired on 1200 matters, 1200 files**  
 2 **that I've been involved in analyzing and opining about.**  
 3 Q So what percentage of your work in the past five  
 4 years has been on behalf of insurance companies when you  
 5 do forensic work?  
 6 **A Just generally speaking it's about nine to one;**  
 7 **nine for defense, one for plaintiffs.**  
 8 Q Can you look at your CV and tell me wh ch cases  
 9 you've testified for on behalf of the policyholder?  
 10 **A (Witness complies)**  
 11 MR. SNODGRASS: Court reporter, you can  
 12 marking as an exhib t, Exhibit J, as the next exhibit.  
 13 (Exhib t No. 7 was marked for identif cat on  
 14 purposes)  
 15 THE WITNESS: I've looked at my CV and I've  
 16 testified on six occasions where the party I was working  
 17 for may have been a plaintiff or a defendant where an  
 18 insurance policy see was involved and providing  
 19 testimony for the pol cyholder.  
 20 Q (By Mr. Snodgrass) What's the first one? You can  
 21 go by the number.  
 22 **A I should point out that some of these depositions**  
 23 **are trial testimony. Don't involve -- may not involve**  
 24 **insurance. So there is no policyholder on either side.**  
 25 Q Well, I want where you represented the

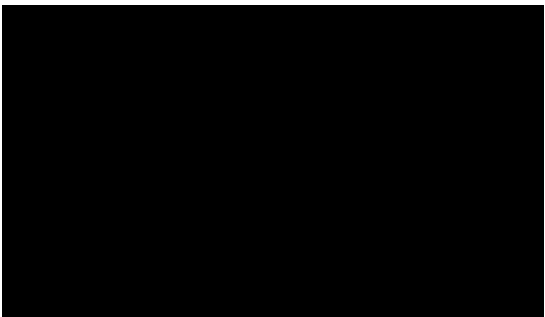
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1 **Insurance & Casualty and/or Armstrong Bank, et al.**  
 2 Q What type of -- so they had a fire, they were  
 3 seeking coverage. What was your opinion?  
 4 **A I was hired to determine the extent of the fire**  
 5 **damage and what would be required to restore it. That**  
 6 **was my role.**  
 7 Q Did you do an estimate? An Xactimate estimate?  
 8 **A Yes.**  
 9 Q Who was the Plaintiff's attorney in that case?  
 10 **A Fella named Doug Terry.**  
 11 Q Do you know whether or not you did an ACV or an  
 12 RCV, or just an RCV only claim?  
 13 **A I don't remember.**  
 14 Q And there's no other case on this list where you  
 15 represented an pol cyholder against the insurance  
 16 company?  
 17 **A Not when you say it exactly like that. I mean,**  
 18 **there are insurance companies in here that were involved**  
 19 **where I was either working as -- on the plaintiff's side**  
 20 **or the defense side. And there are cases in here where**  
 21 **there are no insurance companies involved either as --**  
 22 Q I just was trying to get my quest on answered.  
 23 Was there any other cases in here where you were a  
 24 pol cyholder against an insurance company?  
 25 **A I think I answered it.**

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1 pol cyholder. Identify those, please.  
 2 **A Okay. On Number 9, Cynthia Stokes versus Asian**  
 3 **Restaurant. I've testified on behalf of Asian**  
 4 **Restaurant where a policy -- where an insurance policy**  
 5 **defending Asian Restaurant LLC was involved.**  
 6 Q Wa t a second. Were you representing a 9, a  
 7 pol cyholder seeking coverage under a property policy?  
 8 **A Number 9 I was representing Asian Restaurant who**  
 9 **had a policy in place to defend against Cynthia Stokes.**  
 10 Q Okay. I'm looking for where you represented the  
 11 pol cyholder seeking coverage under a property policy?  
 12 **A Seeking coverage?**  
 13 Q Yep.  
 14 **A You mean where coverage had been denied?**  
 15 Q Well, seeking coverage or you're trying to expand  
 16 coverage. In other words, you're representing the  
 17 pol cyholder going against the insurance company.  
 18 **A Number 14.**  
 19 Q Any others?  
 20 **A I think that's it.**  
 21 Q In the Lander case, what was the nature of the  
 22 dispute?  
 23 **A A fire had occurred to a residential structure**  
 24 **that was owned by the Landers. And they were seeking to**  
 25 **have that repaired by the American National Property**

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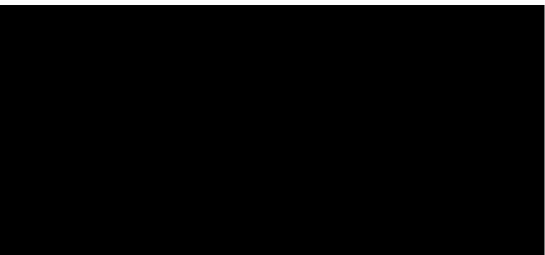

1 Q You answered t no?  
 2 **A No. I don't think that's what I said.**  
 3 Q Okay. Are there any other cases in here where you  
 4 were a policyholder directly adverse to an insurance  
 5 company other than the Sander's case?  
 6 MR. KAHN: Object on. Asked and answered.  
 7 THE WITNESS: I don't think so.  
 8 Q (By Mr. Snodgrass) Okay. So these 1200 files,  
 9 these date back to '98?  
 10 **A Yes.**  
 11   
 12   
 13   
 14   
 15   
 16   
 17   
 18   
 19   
 20   
 21 Q So what's the gross revenue that you have for all  
 22 your forensic files in 2017?  
 23 **A I don't know that number specifically.**  
 24 Q Well, how many active files do you have at any  
 25 given one time?

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1 **A I would have to approximate that too. Somewhere**  
 2 **between probably 50 and 80 at any given time.**  
 3 Q Okay. And so what would you approximate to be  
 4 your gross revenue from forensics on an annual basis?  
 5 **A For my entire company or just for me?**  
 6 Q Well, let's take it one step at a time. Just for  
 7 you first.  
 8 **A Well, I don't know for me, just me. And it would**  
 9 **just be a --**  
 10 Q You can give me a reasonable range, if you want?  
 11 **A No. It would just be a -- gross revenues not**  
 12 **including experiences and so on and so forth. It's**  
 13 **probably somewhere between 900,000 and \$1 million per**  
 14 **year.**  
 15 Q And didn't you tell me that your net profit for  
 16 your company was about \$1 million a year?  
 17 **A I think I estimated it at that. Yes.**  
 18 Q So your construction business is pretty much a  
 19 break even?  
 20 **A No. Because you're mixing apples and oranges.**  
 21 **When I tell you the expert side, there's expenses**  
 22 **connected to that, just like there are expenses**  
 23 **connected to construction revenue. There's cost of**  
 24 **doing business, internal overhead. You know, all sorts**  
 25 **of --**


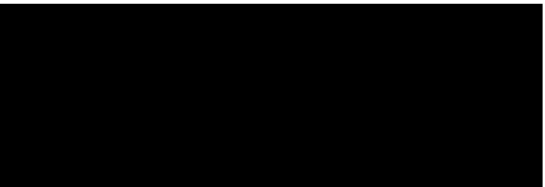
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1 business versus your forensic practice?  
 2 **A No.**  
 3 Q You use computers mostly for your forensic  
 4 practice so that it's not so much paper that you use?  
 5 **A We use both as necessary.**  
 6 Q And you bill for your travel time; correct?  
 7 **A When it's reimbursable. Yes.**  
 8   
 9  
 10  
 11  
 12  
 13  
 14  
 15  
 16 Q (By Mr. Snodgrass) Yes?  
 17 **A Yes.**  
 18 Q Okay. So in this case the, expenses turned out to  
 19 be rather profitable; right?  
 20 MR. KAHN: Object on. Form.  
 21 THE WITNESS: I'm not sure what you mean by  
 22 that? How could expenses be profitable?  
 23   
 24  
 25

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1 Q But you bill for your expenses. I'm looking at  
 2 your invoices right now. We can, in fact, mark those as  
 3 Exhibit, let's say, K. And let's mark that as the next  
 4 exhibit?  
 5 (Exhibit No. 8 was marked for identification  
 6 purposes)  
 7 Q (By Mr. Snodgrass) Are these your invoices in  
 8 this case?  
 9 **A Yes. They appear to be.**  
 10 Q Did you bill for your expenses in this case?  
 11 **A Well, certain kinds of expenses. But you don't**  
 12 **see on here the cost of health insurance or FICA**  
 13 **matching or paper or electricity or rent or I could**  
 14 **just --**  
 15 Q Let's kind of go through for this, your forensic  
 16 practice. Do you have a separate office for your  
 17 forensic practice versus your construction practice?  
 18 **A No.**  
 19 Q You have separate health insurance policies versus  
 20 your construction practice?  
 21 **A No.**  
 22 Q Okay. Do you buy paper separately for your  
 23 forensic practice and your construction practice?  
 24 **A Ask that again.**  
 25 Q Do you buy paper separately for you construction

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1   
 2  
 3  
 4  
 5  
 6 Q (By Mr. Snodgrass) Maybe you -- do you fly there?  
 7 **A See where it says Southwest Airline?**  
 8 Q Let's see. Yeah.  
 9 **A That's an airplane.**  
 10 Q Oh, okay. So not only did you change for you  
 11 plane ticket, you separately charged for the time  
 12 sitting on the plane?  
 13 **A Yes.**  
 14 Q So I'm wondering why you believe that your  
 15 company's profit is not wholly dependent on your  
 16 forensic practice, sir?  
 17 MR. KAHN: Objection. Form. Mischaracterizes  
 18 testimony.  
 19 THE WITNESS: What would make you wonder that?  
 20   
 21  
 22  
 23  
 24  
 25

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 **A Yes.**  
12 Q And are those people getting assignments through  
13 you that you hand out the work too?  
14 **A Sometimes.**  
15 Q Is that most of the time?  
16 **A Well, assignments come in in different ways. It**  
17 **would be hard for me to generalize, you know, how it**  
18 **always happens.**  
19 Q Which people from your company help you w th your  
20 forensic assignments?  
21 **A A guy named Derrick VanDorn and William Bean.**  
22 Q Did Mr. VanDorn or Mr. Bean help you with this  
23 assignment?  
24 **A No.**  
25 [REDACTED]

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1 Q And do you know whether or not Mr. Guevara even  
2 works for State Farm any more?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: It's my understanding he does  
5 not.  
6 Q (By Mr. Snodgrass) Do you know when the last time  
7 in the last 15 years Mr. Guevara handled a property  
8 claim in the State of Mississippi?  
9 MR. KAHN: Objection. Form.  
10 THE WITNESS: I don't know.  
11 Q (By Mr. Snodgrass) Okay. So to say that you  
12 relied on Mr. Guevara is a little deceptive in that we  
13 don't know how often Mr. Guevara was handling claims in  
14 the State of Mississippi to begin with; right?  
15 MR. KAHN: Objection. Form.  
16 THE WITNESS: I don't think t's deceptive at  
17 all. I mean, I feel like I can rely as an expert on  
18 whoever I feel like is relied -- can be relied upon.  
19 Q (By Mr. Snodgrass) Well, I guess you could. But  
20 wouldn't you want to know whether or not what you're  
21 relying on is applicable to the issues?  
22 MR. KAHN: Objection. Form.  
23 THE WITNESS: I know of Mr. Guevara and I'm  
24 familiar with his experience overall, and I've met him  
25 before. And so I've chose to rely on him.

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1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 Q You testified a moment ago that -- well, you  
23 didn't talk to anybody, you relied upon the declarat on  
24 of Juan Guevara. Do you remember that?  
25 **A Yes.**

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1 Q (By Mr. Snodgrass) Where did Mr. Guevara live?  
2 **A I don't know. I don't know his address or where**  
3 **he lived.**  
4 Q What city does he live in?  
5 MR. KAHN: Objection. Form  
6 THE WITNESS: I don't know that either.  
7 Q (By Mr. Snodgrass) Where did you meet him?  
8 **A I think on a claim years ago.**  
9 Q You think on a claim. How long ago d d you meet  
10 him?  
11 **A I would stay probably between 15 to 20 years ago.**  
12 Q What was he doing at that time? Was he working in  
13 Mississippi?  
14 **A I don't recall even where it was.**  
15 Q Do we have any reason to believe that Mr. Guevara  
16 has ever handled a claim in the State of Mississippi?  
17 MR. KAHN: Objection. Form.  
18 THE WITNESS: I don't know.  
19 Q (By Mr. Snodgrass) Okay. You talk about  
20 Ms. Mitchell's estimate. And I think you rendered a new  
21 opin on that she should have been able to determine from  
22 her estimate that the State Farm was depreciating labor.  
23 Do you remember that opin on?  
24 **A Yes.**  
25 Q And marked is her estimate as deposition Exhibit

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1 Number 7.  
2 MR. SPRAGINS: 7.  
3 MS. SNODGRASS: 7?  
4 MR. SPRAGINS: Yes.  
5 Q (By Mr. Snodgrass) Does this look to you look an  
6 Xactimate estimate?  
7 **A Yes.**  
8 Q Okay. And what line items do you believe would  
9 show that she should know that --  
10 MR. KAHN: Joe. Joe. I don't know what  
11 document you intended to mark. I'm looking at one that  
12 has a couple of pages from one estimate, and then it has  
13 claim rep draft on top of it. It looks like two  
14 different dates. Two different times for the estimate.  
15 MR. SNODGRASS: It should be Bates 63 through  
16 97.  
17 MR. KAHN: I'm sorry. What was that?  
18 MR. SNODGRASS: 63 through --  
19 MR. KAHN: I've got 69 through 97, but there's  
20 two different dates. One of them says draft, one's at  
21 9:34 a.m., one's a 9:26 a.m.  
22 MR. SNODGRASS: All right. So hold on. Let's  
23 stop right there. So I emailed the court reporter this  
24 morning. You're doesn't start at 63?  
25 MR. KAHN: It starts at 69.

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1 Q (By Mr. Snodgrass) Okay. So, Mr. Berryman, can  
2 you -- from these documents, from State Farm's claim  
3 file, can you identify for me where you're getting this  
4 notion that State Farm notified Ms. Mitchell that it was  
5 depreciating labor?  
6 MR. KAHN: Objection. Form.  
7 THE WITNESS: Well, I think -- let's look at  
8 67 PROD. On line 3 for instance, flashing pipe jack.  
9 Says two -- shows the unit price, and then depreciation.  
10 And so I think it's common sensical that that unit price  
11 23.47 includes labor and material to place it on the  
12 roof.  
13 Q (By Mr. Snodgrass) Okay. So let's just -- so the  
14 3-tab 25-year composite shingle, you're looking at line  
15 item 2; is that correct?  
16 **A No. I was looking at line item 3, flashing the**  
17 **pipe jack.**  
18 Q Flashing pipe jack. So why would a lay person  
19 understand that that wasn't referring to materials, like  
20 flashing a pipe jack?  
21 MR. KAHN: Objection. Form.  
22 THE WITNESS: Because I think, first of all,  
23 there's no place on the estimate where labor to install  
24 anything appears. So to me it's common sensical and  
25 I've known policyholders in the process to clearly

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1 MR. SNODGRASS: Okay. Miss Court Reporter.  
2 So I emailed pages 63 to 68 to your office this morning  
3 and instructed them to insert that for Exhibit J.  
4 THE COURT REPORTER: Let me see if that's in  
5 there. I don't know.  
6 MR. SNODGRASS: So she received 63 through 68  
7 was supposed to attach that to deposition Exhibit J.  
8 THE COURT REPORTER: Okay. That must have  
9 gone to the front. 63 through 69?  
10 MR. SNODGRASS: 63 through 68, it went to  
11 scheduling 3. The scheduling 3. You have it there?  
12 THE COURT REPORTER: Yeah. I think we have  
13 it.  
14 MR. KAHN: I will just -- so we are going to  
15 change these pages but I do want to put on the record.  
16 THE COURT REPORTER: So this is added to which  
17 exhibit?  
18 MR. KAHN: Added to Exhibit 7.  
19 MR. SNODGRASS: So is Exhibit 7 now 63 through  
20 98?  
21 MR. KAHN: 98. And I would just make an  
22 objection that it appears there is more than one  
23 estimate in here, one of which is a draft.  
24 MR. SNODGRASS: That's fine. As long as I've  
25 got the sequential claim file numbers, that's fine.

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1 understand that when it says pipe jack, that's  
2 everything it takes to get it up there; labor, material,  
3 nails, everything that's involved. The whole thing is  
4 being depreciated. So that's labor, material, nails,  
5 everything that's involved in order to replace two pipe  
6 jacks.  
7 Q (By Mr. Snodgrass) All right. And so can you  
8 tell me how different this would look if this was  
9 printed off with the depreciate nonmaterials option --  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I would --  
12 (By Mr. Snodgrass) What's the difference in  
13 how this would look if we were depreciating labor and  
14 not depreciating labor?  
15 MR. KAHN: Objection. Form.  
16 THE WITNESS: I don't believe I've ever seen  
17 that.  
18 Q (By Mr. Snodgrass) In other words, it might be  
19 you don't know one way or the other whether it looks  
20 exactly the same if it's depreciating labor versus not  
21 depreciating labor?  
22 MR. KAHN: Objection. Form.  
23 THE WITNESS: I don't see how it could look  
24 exactly the same.  
25 Q (By Mr. Snodgrass) Well, I guess if you don't

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1 know what the print options are, you wouldn't know. So  
2 what I'm saying is, have you ever played with the print  
3 options on Xactimate? Have you ever seen what they look  
4 like when you depreciate labor versus don't depreciate  
5 labor?

6 MR. KAHN: Objection. Form.

7 THE WITNESS: I can't recall doing that. No.

8 Q (By Mr. Snodgrass) Okay. So maybe they look the  
9 same, maybe they look different; right?

10 MR. KAHN: Objection.

11 THE WITNESS: I don't think it would look  
12 diff -- or I do think it would look different.

13 Q (By Mr. Snodgrass) You think?

14 **A (No response)**

15 Q So you also mention, I believe, painting. That  
16 they she should know that painting was being  
17 depreciated; right?

18 **A Yes.**

19 Q So what it's in line item number 10? Was there  
20 any depreciation for the painting going on on that line  
21 item?

22 **A It doesn't appear so.**

23 Q So would a pol cyholder believe then that there  
24 was not labor depreciat on for painting going on?

25 MR. KAHN: Objection. Form.

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1 MR. KAHN: Objection. Form.

2 THE WITNESS: I believe t's because of the  
3 way the Xactimate programming works with respect to  
4 painting minimums, as they are called. That number is  
5 not necessarily labor or material. That minimum charge  
6 by Xactimate is a value that's imputed into the program  
7 to cover start-up charges, if you fill, when the volume  
8 of painting work and the estimate is deemed to be too  
9 small to meet a pre-program threshold ins de the system.

10 Q (By Mr. Snodgrass) So let me ask you this, do you  
11 know whether line item 4 is materials only?

12 **A My common sensical read of it is that it's labor  
13 and materials and everything that's required to perform  
14 that line item, whether it's nails, cleaning rags, a  
15 ladder, labor, material, paper, whatever is necessary to  
16 accomplish that work.**

17 Q Let me ask you this, can you tell me why painting  
18 would be depreciated in line tem 4, yet ceiling  
19 wouldn't be depreciated in line item 8?

20 MR. KAHN: Objection. Form.

21 THE WITNESS: It could be that the adjuster  
22 dec ded not to take depreciation on that. It could also  
23 be that depreciation was overlooked on that line item.

24 Q (By Mr. Snodgrass) Is there anything on here  
25 where you can tell me how much labor depreciat on was

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1 THE WITNESS: Well, this has to do with the  
2 paint minimum, which is a whole different category of  
3 work and a whole different feature of the estimate.

4 Q (By Mr. Snodgrass) So I'm asking you right now,  
5 do you know, looking at this, whether or not painting  
6 was depreciated or not given the application of the  
7 labor minimum?

8 **A When I look at item 10, I see that there was no  
9 depreciation taken of labor or material.**

10 Q That's not my question. Was painting depreciated  
11 on this or not?

12 MR. KAHN: Objection. Form.

13 THE WITNESS: You mean in this entire  
14 estimate?

15 Q (By Mr. Snodgrass) Yeah.

16 **A Yes, it was.**

17 Q Did the labor minimum wipe that all out? Do you  
18 know?

19 MR. KAHN: Objection. Form.

20 THE WITNESS: Wipe out the depreciation?

21 Q (By Mr. Snodgrass) Yes. The labor depreciation.

22 MR. KAHN: Objection. Form.

23 THE WITNESS: No, it didn't.

24 Q (By Mr. Snodgrass) Why would State Farm show no  
25 depreciation for line item 10?

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1 depreciated in full?

2 **A No. The total for labor depreciation does not  
3 appear in this document.**

4 Q Can you turn to Page 92?

5 **A Okay.**

6 Q Can you tell from this document whether or not  
7 there's an indication that there was depreciation of any  
8 of the labor components described in the labor report?

9 MR. KAHN: I'm going to object to form and on  
10 the basis that this appears in the claim rough draft  
11 section. But you can answer.

12 THE WITNESS: The answer is no.

13 Q (By Mr. Snodgrass) Mr. Kahn asked you, and to go  
14 back into the report of Toby Johnson. And I think you  
15 might have changed some testimony around a little bit.  
16 So I want to talk to you about that. Would you get  
17 Exhibit 5 out, please?

18 **A Okay.**

19 Q First he asked you about Paragraph 14, as well as  
20 various categories of depreciation mandated by the  
21 insurance company to be depreciated. Do you see that?

22 **A Yes.**

23 Q Okay. Now, if you turn to the screenshot that we  
24 discussed earlier. I believe it might be Exhibit 3?

25 **A Yes.**

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1 Q First off, do you know who mandates the setup of  
2 these depreciat on categories? Is this done by the  
3 insurance company or is this done by the adjuster?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: I don't know.  
6 Q (By Mr. Snodgrass) So when Mr. Johnson says that  
7 var ous categories of depreciation are mandated by the  
8 insurance company to be depreciated, you don't know one  
9 way or the other whether or not he's right; correct?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: I don't know where he gets that  
12 informat on.  
13 Q (By Mr. Snodgrass) Well, you didn't read the  
14 deposit on of Charlie Foster, d d you?  
15 **A No.**  
16 Q He testified that the insurance company made him  
17 do it. You don't remember Juan Guevara's declaration  
18 very well, do you?  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: Depends on what the question is.  
21 Q (By Mr. Snodgrass) Do you remember how  
22 Mr. Guevara declared that State Farm sets depreciation  
23 settings for claims?  
24 MR. KAHN: Objection. Form.  
25 THE WITNESS: I'd want to get t back out and

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1 Q You have a new opin on now, not in your report,  
2 that somehow Mr. Johnson's estimate of four to six  
3 minutes per claim might be understated; right?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: Yes. I believe it is  
6 understated.  
7 Q (By Mr. Snodgrass) Now, Mr. Johnson went through  
8 a process where he took 150 claims that were randomly  
9 sampled; so in other words, very simple claims, very  
10 complex claims, went through the entire process and  
11 opined that it took four to six minutes so long as he  
12 did the interpretation that we advance; that is, that  
13 actual cash value is minimum payment.  
14 Now, you certainly didn't engage in that  
15 process; right?  
16 MR. KAHN: Objection. Form.  
17 THE WITNESS: I d d not examine 150 files.  
18 Q (By Mr. Snodgrass) And some of the things that  
19 Mr. Johnson said took only seconds was, for example, you  
20 would note from Paragraph Number 2, that the class  
21 excludes pol cies with form endorsement Form FE3650. Do  
22 you see that in Paragraph 2 of his report?  
23 **A Yes.**  
24 Q Do you even know what Form FE3650 is?  
25 **A No.**

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1 look at it.  
2 Q (By Mr. Snodgrass) Okay. But as you sit here  
3 right now, do you have any reason to believe what  
4 Mr. Johnson said in Paragraph 14 about depreciation  
5 categories, the categories we've been discussing on  
6 Exhib t 3, is not entirely 100 percent accurate?  
7 **A I don't have any reason to criticize it.**  
8 Q And you don't have any factual basis to criticize  
9 his statement then; right?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: Yes. That's what I just said.  
12 Q (By Mr. Snodgrass) All right. So I want to talk  
13 about time estimates again. So Mr. Johnson claims that  
14 he reviewed 150 claim files, and that it took, on  
15 average, four to six minutes per claim. Do you remember  
16 that?  
17 MR. KAHN: Objection. Form. Mischaracterizes  
18 testimony.  
19 THE WITNESS: Are you talking about his  
20 deposition testimony?  
21 Q (By Mr. Snodgrass) No. I'm talking about his  
22 report.  
23 **A What number does that appear?**  
24 Q You were talking about Paragraph 43.  
25 **A What's your question?**

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1 Q Okay. Would that be kind of important for you in  
2 order to try to attack Mr. Johnson on how quickly it can  
3 take to analyze these files?  
4 MR. KAHN: Objection. Form.  
5 THE WITNESS: No. I don't think so because  
6 I'm just reading his item 43 as it reads. And I do have  
7 experience with Xactimate ESX files. And the statement  
8 that he makes in 43, that's four to six minutes, I don't  
9 think that's accurate based on my own experience.  
10 Q (By Mr. Snodgrass) First off, he says without the  
11 and Xactimate ESX files. So he's not in Paragraph 43  
12 even talking about the Xactimate ESX files.  
13 But putting that aside, for example,  
14 Mr. Johnson found that in a matter of seconds he could  
15 eliminate dozens of claims from the analysis of the 150  
16 because they contained form FE3650. How long would it  
17 take you to eliminate all the 150 claims that contained  
18 Form FE3650?  
19 MR. KAHN: Objection. Form.  
20 THE WITNESS: I don't know.  
21 Q (By Mr. Snodgrass) Could it take you seconds if  
22 you knew how to operate Excel spreadsheets?  
23 MR. KAHN: Objection. Form. Argumentative.  
24 THE WITNESS: I'm not sure. I'd just have to  
25 look into it and analyse it.

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1 Q (By Mr. Snodgrass) So anyways, what Mr. Johnson  
2 did is he took 150 claim files and he applied a very  
3 strict set of objective criteria, and concluded t took  
4 four to six minutes, based on an analysis of Excel  
5 spreadsheets and the claim file. And because you don't  
6 even know what Form FE3650, I suppose you would probably  
7 tell me you don't even know if Form FE3650 is on an  
8 Excel spreadsheet or not?

9 MR. KAHN: Objection. Form.

10 THE WITNESS: Not without looking into t.

11 Q (By Mr. Snodgrass) Okay. Do you think that maybe  
12 before you attack another professional, you might want  
13 to look into it a little bit more before you just pass  
14 dispersion on his opinion?

15 MR. KAHN: Objection. Form. Argumentative.

16 THE WITNESS: Well, I'm not casting  
17 dispersions. I'm giving you my opinion after having  
18 looked at claim files myself to determine the things  
19 that we're trying to determine here today. And I can  
20 tell you it takes more than just two or three minutes.

21 Q (By Mr. Snodgrass) Well, he d dn't say two to  
22 three minutes. He said two to three minutes if he had  
23 access to the ESX file and the electronic claims  
24 management system. He sa d four to six minutes if he  
25 used hard copy. And that included all of the random

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1 those dozens of claims from the analysis?

2 MR. KAHN: Objection. Form.

3 THE WITNESS: I wouldn't know w thout testing  
4 t.

5 Q (By Mr. Snodgrass) So certainly if Mr. Johnson  
6 did test t and came up with his opin ons, you would  
7 have basis to challenge him; correct?

8 MR. KAHN: Objection. Form.

9 THE WITNESS: The only basis would be my own  
10 experience in reviewing the claim files that I d d  
11 review and how long it took me to do it.

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1 sampling claims, and also the assumption that actual  
2 cash value is a minimum payment owed.

3 Certainly you could go through that type of a  
4 process to try to determine the amounts and the times at  
5 issue; correct?

6 MR. KAHN: Objection. Form.

7 THE WITNESS: I have not. I have gone through  
8 a similar process. And I'm offering an opinion based on  
9 my own experience.

10 Q (By Mr. Snodgrass) What about, how long did t  
11 take you to exclude the claims where the first claim  
12 payment was made on or after June 23rd, 2014? How long  
13 did that take you to exclude all those claims?

14 MR. KAHN: Objection. Form.

15 THE WITNESS: I'm not sure I understand what  
16 you're asking.

17 Q (By Mr. Snodgrass) Do you see Paragraph Number 2?

18 **A Yes.**

19 Q Do you see that Mr. Johnson excluded claims where  
20 the first claim payment would have been made on or after  
21 June 23rd, 2014?

22 MR. KAHN: Objection. Form.

23 THE WITNESS: Yes.

24 Q (By Mr. Snodgrass) Do you disagree with me if I  
25 told you that it only took seconds to eliminate all of

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1 Q Here's, I think, one of the big differences.  
2 Because you've never handled or adjusted a claim before,  
3 it took Toby Johnson under a second to realize this  
4 claim wasn't in the class defin tion. Why d d t take  
5 you so long?

6 MR. KAHN: Objection. Form.

7 THE WITNESS: Because we're looking for two  
8 different things. He's got his mission. And I'm  
9 looking at measuring the impact of labor depreciat on.  
10 Those are two different things.

22 Q (By Mr. Snodgrass) Well, you realize, and would  
23 be able to qu ckly figure out, that this claim was never  
24 in the class because this claim falls outside of the pay  
25 period at issue; right?



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1 MR. KAHN: Objection. Form.  
2 THE WITNESS: Again, t didn't make any  
3 difference to the kind of analysis that I was going  
4 through as to whether it was or wasn't in the class as  
5 you described it.  
6 Q (By Mr. Snodgrass) Did you ever wonder that maybe  
7 this claim isn't even representative and State Farm's  
8 attorneys had to find a claim way outs de the class  
9 period to have you review it?  
10 MR. KAHN: Objection. Form.  
11 THE WITNESS: On. I did not think that.  
12 Q (By Mr. Snodgrass) Do you know whether or not any  
13 of the claims you reviewed were outside the class period  
14 and could have been eliminated in seconds and --  
15 MR. KAHN: Objection. Form.  
16 THE WITNESS: I didn't check because it wasn't  
17 important to me whether they were in or out of the  
18 proposed class. It was more important to me to analyze  
19 them to measure the impact, if any, of labor  
20 depreciation.

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1 But I wouldn't have done what you d d if you had to make  
2 flights.  
3 Q (By Mr. Snodgrass) All right. Back to the  
4 quest ons.

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7 Q (By Mr. Snodgrass) So this is back to your theory  
8 that if State Farm underpays actual cash value  
9 in tially, t can become okay based on later events?

10 MR. KAHN: Objection. Form. Mischaracterizes  
11 testimony.

12 THE WITNESS: No. That's not what I've given  
13 an opinion on today.

14 Q (By Mr. Snodgrass) Let me ask you this --

15 MR. KAHN: Can I just ask how much longer you  
16 anticipate? We had about five or six minutes of  
17 redirect. You've been going for over half hour.

18 MR. SNODGRASS: You know what you did. That's  
19 not how it works.

20 MR. KAHN: You're sitting comfortably in  
21 Minnesota. I'm just asking if you make your way quickly  
22 through what else you've got. As a professional  
23 courtesy, we need to make some flights.

24 MR. SNODGRASS: I understand. And I wouldn't  
25 have done what you did. I understand why you did it.

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25 Q (By Mr. Snodgrass) Okay. Now, if State Farm had

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1 made that payment and not withheld labor depreciation  
2 from the ACV payment, would the policyholder have had to  
3 pay any of this money back to State Farm?  
4 MR. KAHN: Object on. Form.  
5 THE WITNESS: I think that would require a  
6 policy interpretation. And I don't interpret policies.  
7 Q (By Mr. Snodgrass) Well, in your experience --  
8 and I'm not asking you to interpret policy. In your  
9 experience, would the policyholder ever have had to send  
10 that money back to State Farm?  
11 MR. KAHN: Object on. Form. Calls for legal  
12 conclusion.  
13 THE WITNESS: I have not seen that in my  
14 experience.  
15 Q (By Mr. Snodgrass) So if in your experience State  
16 Farm did not withhold labor depreciation, the  
17 policyholder would, in fact, still have \$166.22 in his  
18 or her pocket; correct?  
19 MR. KAHN: Object on. Form.  
20 THE WITNESS: They might.  
21 Q (By Mr. Snodgrass) What do you mean might?  
22 **A They might have spent it.**  
23 Q Okay. But at one time they would have kept it;  
24 right?  
25 MR. KAHN: Object on. Form.

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1 THE WITNESS: I'm not sure what they would  
2 have done with it.  
3 Q (By Mr. Snodgrass) Okay. But they would have  
4 received it from State Farm; right?  
5 **A Yes. Under your scenario. Yes.**  
6 Q And in your experience they would have never had  
7 to pay that money back to State Farm; right?  
8 MR. KAHN: Objection. Form. Calls for legal  
9 conclusion.  
10 THE WITNESS: As I've said, I've never seen  
11 that happen.  
12 Q (By Mr. Snodgrass) So we can say with certainty,  
13 based on your experience, that by withholding labor,  
14 State Farm has damaged the policyholder \$166.22, because  
15 again, based on your experience, the policyholder would  
16 never have had to return a portion of its ACV payment to  
17 State Farm; correct?  
18 MR. KAHN: Objection. Form. Calls for legal  
19 conclusion.  
20 THE WITNESS: No. I think that's incorrect.  
21 Q (By Mr. Snodgrass) What's incorrect about that?  
22 **A The way you characterized it is incorrect.**  
23 Q What's incorrect about it?  
24 **A The whole thing.**  
25 Q Well, let's go through it then. What's incorrect?

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1 **A The scenario as you posed it, the way you said it**  
2 **is incorrect.**  
3 Q I understand that you think it's incorrect. I  
4 need to know why.



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21 Q Doesn't that give the insurance company a hell of  
22 an incentive to underpay actual cash value and see how  
23 the claim turns out?  
24 MR. KAHN: Object on. Form. Argumentative.  
25 THE WITNESS: I don't think so.

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1 Q (By Mr. Snodgrass) Well, why not? I mean,  
2 wouldn't State Farm always benefit by underpaying ACV  
3 and kind of hoping that the policyholder tries to  
4 find -- use its own labor, hire unlicensed contractors,  
5 get the cheapest repair possible. Wouldn't State Farm  
6 underpay all claims and kind of hope this worked out in  
7 the end if your creation was correct?  
8 MR. KAHN: Object on. Form. Argumentative.  
9 THE WITNESS: I have not seen evidence of that  
10 in my career with State Farm or any carrier.  
11 Q (By Mr. Snodgrass) That wasn't the question.  
12 Wouldn't that create an incentive though to underpay?  
13 If there's no penalty for underpaying ACV, why not  
14 underpay ACV and see what happens as time goes on?  
15 MR. KAHN: Object on. Form.  
16 THE WITNESS: ACV is an estimate in the first  
17 place.  
18 Q (By Mr. Snodgrass) That's fine. But does that --  
19 the fact that --  
20 MR. KAHN: You're interrupting the witness'  
21 answer.  
22 Q (By Mr. Snodgrass) Okay. Go ahead.  
23 **A ACV value is an estimated value. And I have not**  
24 **seen evidence of someone trying to manipulate that for**  
25 **any reason.**

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1 conclusion.  
2 THE WITNESS: I think it would depend on what  
3 the policy says but --  
4 Q (By Mr. Snodgrass) No. I'm asking about your  
5 experience. In your experience do sometimes the  
6 policyholder says, you know what, I want to take the  
7 option and just receive the actual cash value payment?  
8 **A Yes. I think that happens sometimes.**  
9 Q In those circumstances, does the policyholder have  
10 the right to say, you know, I think that ACV payment for  
11 painting is okay, but I think they underpaid me for the  
12 roof. Does the policyholder have that right?  
13 MR. KAHN: Objection. Form.  
14 THE WITNESS: Yes. I think so.  
15 Q (By Mr. Snodgrass) Okay. So if the policyholder  
16 has that right, does the policyholder also have the  
17 right to say, you know what, I think you did everything  
18 fine on the scope and on the pricing, but I disagree  
19 with the way you calculated depreciation. Does the  
20 policyholder have that right?  
21 MR. KAHN: Objection. Form. Calls for legal  
22 conclusion.  
23 THE WITNESS: I hesitate to start talking  
24 about what a policyholder's rights are. But as I  
25 expressed to you earlier, that there's often dialogue

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1 Q That's fine. But is there -- have you ever seen  
2 an insurance company underpay an initial ACV payment?  
3 MR. KAHN: Objection. Form.  
4 THE WITNESS: In my experience State Farm and  
5 other carriers tender the estimated ACV.  
6 Q (By Mr. Snodgrass) And when the carrier tenders  
7 the ACV and issues an estimate, does the policyholder  
8 have the right to agree to portions of the estimate?  
9 MR. KAHN: Objection. Form. Calls for legal  
10 conclusion.  
11 THE WITNESS: By that do you mean come back  
12 and say, hey, I think it's enough for painting, but I  
13 don't think it's enough for roofing?  
14 Q (By Mr. Snodgrass) Yeah.  
15 **A Sure. That doors always open for discussion, and**  
16 **reconciliation about the scope of work and proper extent**  
17 **of damage and costs connected there with. That's**  
18 **typically what happens in the industry is that there is**  
19 **a dialogue that moves the process forward once the**  
20 **initial RCV and ACV are estimated.**  
21 Q Does the policyholder, in your experience in 40  
22 years, does the policyholder have the right to just take  
23 the actual cash value amount as opposed to having to  
24 repair the property?  
25 MR. KAHN: Objection. Form. Calls for legal

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1 between the policyholder and the insurance company that  
2 through their adjuster on nuances, tweaks on scope,  
3 tweaks on pricing, tweaks on depreciation or any item  
4 that the policyholder wants to discuss.  
5 Q (By Mr. Snodgrass) I'm not talking about  
6 discussed, I'm talking about agreement. Can a  
7 policyholder agree to accept an Xactimate estimate, line  
8 items 1 through 5 but dispute line item 6?  
9 MR. KAHN: Objection. Form. Calls for legal  
10 conclusion.  
11 Q (By Mr. Snodgrass) Have you seen that happen?  
12 **A Are you talking about permanently? In other words**  
13 **to take -- to take certain portions of the ACV but**  
14 **continue to dispute others and perhaps go to an**  
15 **appraisal process?**  
16 Q No. My question is simple this, when the  
17 insurance company issues an estimate, adjuster gets a  
18 full and fair chance to investigate the claim all he or  
19 she wants, issues the estimate. Does the policyholder  
20 have the right to say I agree with this part, this part,  
21 this part and this part, but I dispute that part. Does  
22 the policyholder -- does that happen in your experience?  
23 MR. KAHN: Objection. Form. Calls for legal  
24 conclusion.  
25 THE WITNESS: I don't know what their rights

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1 are under the policy. And second, I have not seen that  
2 happen.  
3 Q (By Mr. Snodgrass) You've not seen a policyholder  
4 and insurance company agree to portions of an estimate  
5 but not others?  
6 **A Not in the manner that you described.**  
7 MR. KAHN: Joe, we can give you about five  
8 minutes we got to hit the road. Otherwise, unless you  
9 want to agree to pay for a hotel and in new plane fare.  
10 We agreed to start at 11 this morning. You've been  
11 going for 45 minutes now.  
12 MR. SNODGRASS: You shouldn't have reopened.  
13 MR. KAHN: You got five minutes, Joe.  
14 MR. SNODGRASS: You can leave if you want.  
15 Let's go forward.  
16 (By Mr. Snodgrass) What do you mean? You've  
17 never seen policyholders and insurance companies agree  
18 to portions of an estimate?  
19 MR. KAHN: Objection. Form. Asked and  
20 answered.  
21 THE WITNESS: Not in the way you characterized  
22 it.  
23 Q (By Mr. Snodgrass) I'm not characterizing it in  
24 any way. I'm just asking, you've not seen a  
25 policyholder and insurance company agree to portions of

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1 capable of doing.  
2 Q (By Mr. Snodgrass) Have you seen that happen?  
3 MR. KAHN: Object on. Form  
4 THE WITNESS: I have not.  
5 Q (By Mr. Snodgrass) Have you ever worked for State  
6 Farm in an appraisal?  
7 MR. KAHN: Object on. Form. Asked and  
8 answered.  
9 THE WITNESS: Yes.  
10 Q (By Mr. Snodgrass) How often?  
11 **A Over 20 years perhaps approximately 20 times.**  
12 Q When was the last time you worked as a State  
13 Farm's appraiser?  
14 **A Perhaps in the last year or two.**  
15 Q And where do you typically get hired out of when  
16 you do appraisals?  
17 **A I'm not sure what you mean by that.**  
18 Q What location? What geography?  
19 **A States we've been talking about today. Maybe**  
20 **even -- even other states.**  
21 Q So when you've been designated by State Farm to be  
22 the appraiser, was that with the agreement of  
23 policyholder or are you the party appraisal?  
24 MR. KAHN: Object on. Form.  
25 THE WITNESS: I was designated as the

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1 an estimate?  
2 MR. KAHN: Object on. Form. Asked and  
3 answered.  
4 THE WITNESS: Not in the way you characterized  
5 it.  
6 Q (By Mr. Snodgrass) And how did my last  
7 question -- again, forgetting anything I said before.  
8 My last question was, have you ever seen a policyholder  
9 and insurance company agree to portions of an estimate?  
10 Yes or no.  
11 MR. KAHN: Object on. Form. Asked and  
12 answered.  
13 THE WITNESS: Sure. That generally, yes.  
14 Policyholders and insurance companies have disagreements  
15 all the time over portions of estimates. And those get  
16 worked out.  
17 Q (By Mr. Snodgrass) Well, does the policyholder  
18 have the right -- when an estimate is presented to a  
19 policyholder, does the policyholder have to take the  
20 whole thing or leave the whole thing? Or can he agree  
21 to some parts and not the other?  
22 MR. KAHN: Object on. Form. Asked and  
23 answered. Calls for legal conclusion.  
24 THE WITNESS: I don't know because that  
25 requires an interpretation of the policy which I'm not

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1 insurance carrier's appraiser under the appraisal policy  
2 provision.  
3 Q (By Mr. Snodgrass) Have you ever served as an  
4 umpire?  
5 **A Yes.**  
6 Q When was the last time you served as an umpire?  
7 **A In the last one to two years.**  
8 Q What companies do you appraise for?  
9 **A State Farm, Farmers, Allstate. I'm sure there are**  
10 **others.**  
11 Q List them, please.  
12 **A That's all I can remember as I sit here with**  
13 **specificity.**  
14 MR. SNODGRASS: All right. That's all I have.  
15 MR. KAHN: We'll reserve signature. And can  
16 we please make sure that the draft is marked  
17 confidential?  
18 THE COURT REPORTER: Yes. So read and sign?  
19 MR. KAHN: Yes.  
20 (Signature required; witness excused)  
21 \* \* \* \* \*

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1 J U R A T

2 I, MICHAEL BERRYMAN, state under oath that I have  
3 read the above and foregoing Deposition in its entirety  
4 and that the same is a full, true, and correct  
5 transcription of my testimony so given except for the  
6 corrections noted.

7

8 ( ) CORRECTIONS ATTACHED

9 ( ) NO CORRECTIONS

10

11 \_\_\_\_\_  
12 MICHAEL BERRYMAN

13

14 SUBSCRIBED AND SWORN TO BEFORE ME, the  
15 Undersigned Notary Public in and for the State of  
16 \_\_\_\_\_, on the \_\_\_\_\_ day of  
17 \_\_\_\_\_, 2018.

18

19 \_\_\_\_\_  
20 Notary Public

21

22 My Commission Expires: \_\_\_\_\_

23

24 Reported By: Kimberly D. Idleman, CSR

25

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1 E R R A T A S H E E T

2 WITNESS: MICHAEL BERRYMAN

3 DATE: JUNE 7, 2018

4 STYLE: LORINE MITCHELL -vs- STATE FARM FIRE &  
5 CASUALTY, 17-cv-00170-MPM-RP

6

7 REPORTER: KIMBERLY D. IDLEMAN, CSR

8

9 PAGE LINE CORRECTION

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1 C E R T I F I C A T E

2 STATE OF OKLAHOMA )

3 ) SS:

4 COUNTY OF OKLAHOMA )

5

6 I, KIMBERLY D. IDLEMAN, CSR for the State of  
7 Oklahoma, certify that MICHAEL BERRYMAN was by me sworn  
8 to testify the truth; that the deposition was taken by  
9 me in stenotype and thereafter transcribed and is a true  
10 and correct transcript of the testimony of the witness;  
11 that the deposition was taken on June 7, 2018, at 11:00  
12 am, at 520 Couch Drive, City of Oklahoma City, State of  
13 Oklahoma; that I am not an attorney for or a relative of  
14 either party, or otherwise interested in this action.

15 Witness my hand and seal of office on this the  
16 22nd day of June, 2018.

17

18

19

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21

22 KIMBERLY D. IDLEMAN, CSR

23 Oklahoma Certified Shorthand Reporter

24 Certificate No. 1653

25 Expiration date: December 31, 2018

26

## ERRATA SHEET

CASE: *Mitchell v. State Farm*, No. 3:17-CV-170 (N.D. Miss.)

DATE: June 7, 2018

WITNESS: Michael Berryman

<u>PAGE</u>	<u>LINE</u>	<u>FROM</u>	<u>TO</u>	<u>REASON FOR CHANGE</u>
42	10	just says, what	just as it says, what	Transcription error
63	21	you're	your	Transcription error
76	4	property	a proper	Transcription error
84	18	easily	usually	Transcription error
112	5	I think, as I've	I think, what I've	Transcription error
113	21	what I see using	what I see people using	Transcription error
118	22	used that function to	used that function in my business to	Clarification
129	10	damage	damaged	Transcription error
135	25	depreciate removal.	depreciate removal line items.	Clarification
136	7	Not depreciating removal	Not depreciating removal line items	Clarification
140	5	and	as it was	Clarification
144	4	No.	No, but I have determined the amount of labor depreciation from reviewing State Farm estimates.	Witness misspoke
162	21-22	that that is -- that is more than sufficient	that sometimes an ACV payment is more than sufficient	Clarification
170	14	analysation	analysis	Transcription error
196	24	Then	They	Transcription error



<u>PAGE</u>	<u>LINE</u>	<u>FROM</u>	<u>TO</u>	<u>REASON FOR CHANGE</u>
205	8	acquire	inquire	Transcription error
210	18	policy see was	policy was	Transcription error
214	12	experiences	expenses	Transcription error
221	11	stay	say	Transcription error
238	11	On.	No.	Transcription error

SIGNATURE:


  
Michael Berryman

DATE:

7/19/18

Subscribed and sworn to before me this 19<sup>th</sup> day of July, 2018.

  
Notary Public
